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Thursday, 1 April 1948

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INTERNATIONAL MILITARY TRIBUNAL
FOR THE FAR EAST
Court House of the Tribunal
War Ministry Building
Tokyo, Japan

The Tribunal met, pursuant to adjournment, at 0930.

Appearances:

For the Tribunal, all Members sitting, with the exception of: HONORABLE JUSTICE I. M. ZARYANOV, Member from the U. S. S. R., not sitting from 0930 to 1209.

For the Prosecution Section, same as before.

For the Defense Section, same as before.

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(English to Japanese and Japanese to English interpretation was made by the Language Section, IMTFE.)

MARSHAL OF THE COURT: The International Military Tribunal for the Far East is now in session.

THE PRESIDENT: All the accused are present except UMEZU and SHIRATORI, who are represented by counsel. The Sugamo Prison surgeon certifies that they are ill and unable to attend the trial today. The certificate will be recorded and filed.

Mr. Caudle.

MR. CAUDLE: Mr. President, I will continue where we left off yesterday afternoon on page 4 of Division X of the summation.

(b) SHIRATORI and IRAPS (Imperial Rule Assistance Political Society).

About the time of the general election of April 1942 SHIRATORI was not yet completely recovered from his illness. He had little intercourse with the outside world and rarely saw anyone besides his relatives and close friends. He was mostly engaged in the study and practice of Shintoism. However, a number of young men from his native province asked him for permission to use his name as a candidate in the coming election, expressing their ardent desire to sweep away the long standing abuses of their constituency and by conducting a model campaign set an example to the whole nation. SHIRATORI felt no longer

any interest at all in politics, but was finally prevailed upon to comply with their desire, on condition that he was not himself to take part in the election campaign and that he would make no speech nor even put in an appearance in his constituency. It was only when rival candidates contended that SHIRATORI was so ill that he could not even come down to his native place, that his friends requested him to make a speech or two if only to counter this hostile propaganda. He had to consent, although with much reluctance. He was then very weak, but somehow managed to address several gatherings. He mainly talked about Shintoism and national polity, dwelling almost in passing on current questions of diplomacy and of war. As election speeches in wartime, they were rather uncommon and quite a surprise to many among his hearers.

THE PRESIDENT: Mr. Caudle, there is no evidence of this as far as I recollect. There is no reference given.

MR. CAUDLE: I have a citation for all that, sir, on the following page. It is practically all a quotation from the testimony of the witness MISHIMA.

THE PRESIDENT: Is it? Very well, proceed.

~~MR. CAUDLE: At this general election,~~

SHIRATORI was one of the so-called recommended candidates, but it was a matter arranged between his supporters and the prefectural branch of the recommending body, and he was not himself concerned in it at all but only learned about it afterwards. When he got elected,, on 30 April 1942 SHIRATORI, as a "recommended" member of parliament, almost automatically became a member of the Imperial Rule Assistance Political Society and was also nominated an ordinary member of the Board of Directors of the Society on May 20, 1942. However, as his health was not yet quite normal and as parliamentary life and internal politics were new to him, SHIRATORI was not able or allowed to play any role to speak of either as a director of IRAPS or a member of parliament. He was soon relieved of his seat in the directorate of the IRAPS and he seceded from the Soviety itself on 28 June 1943.

We submit that SHIRATORI did little or nothing during the Pacific War and certainly had no part in the waging thereof. The fact that his activities in IRAPS were so insignificant goes to substantiate this contention. and certainly he is without guilt of any

223. Refer to testimony given by witness MISHIMA, one of SHIRATORI's closest friends, who was in charge of SHIRATORI's election business at that time. Tr. 35004-006; see also Tr. 35053.

kind of charges contained in the Bill of Indictment.

XI. SHIRATORI'S POSITION DURING WORLD WAR II.

SHIRATORI's connections with the Government completely ended when he resigned as Foreign Office Advisor on 22 July 1941 and he never held any official position again until the end of the war. He had scarcely any friend in the Government or in the Army and Navy, nor did he have any special source of information concerning current events and the real war situation. Although he was a member of Parliament in name until his resignation on 5 December 1945, he seldom attended the sessions of the Diet, nor did he serve on any of the Parliamentary committees. He was a perfectly free and independent individual holding no brief for any group or organization whatever.[224]

We would like, in conclusion, to quote a short passage of the testimony given by witness MISHIMA: "It may be said in sum that the serious illness with which he was seized in the spring of 1941 brought about a marked change in Mr. SHIRATORI's character and outlook, drawing him more deeply into a domain of spirituality and religion. He gradually

224. Tr. 35053-054.

ceased to have anything to do, not only with government and general political circles, but with most of his friends of many years' standing. I can bear testimony, as one of the few friends remaining close to him to the last, that during the entire period of World War II, Mr. SHIRATORI concerned himself very little with affairs of this workaday world."[225].

XII. TELEGRAMS OF AMBASSADOR OTT AND OTHER COMMUNICATIONS RELATIVE TO SHIRATORI'S ACTIVITIES AFTER HIS RETURN FROM ROME.

The prosecution offered in evidence a large number of telegrams of Ambassador Ott and other German documents, which formed the most important part of the prosecution's evidence against SHIRATORI. We will treat these telegrams here en bloc, relying on an interrogation of Ambassador Ott by counsel for the accused to refute all allegations and contentions of the prosecution in this regard.[226].

With regard to the interrogation of Ambassador Ott by counsel for SHIRATORI in Peiping, China during May 1947, which interrogation the prosecution has been pleased to belittle and to expiate as an ex parte interrogation, the attention of the Tribunal is called to the following facts:

225. Tr. 35007. 226. Ex. 3579, Tr. 34848-904.

On 13 November 1946 as the minutes of the Chambers hearings will show, an application was filed for subpoenaes to be issued for the production of various witnesses to appear on behalf of the accused SHIRATORI, among which was one for Ambassador Eugene Ott; that thereafter on 26 November 1946 an order was entered granting a subpoena for the production of the said Ott before this Tribunal as a witness. Thereafter, as the record of the clerk's office will show, a subpoena was issued for the said Ott and was forwarded through regular channels for service, but for some unknown reason said subpoena was never served, and this resulted in the necessity of counsel for the defendant SHIRATORI making a long and arduous trip to Peiping to obtain a sworn statement from the said Ott relative to the aforesaid communications and other matters.

Further, the attention of the Tribunal is called to a proceedings in Chambers of Thursday, 1 May 1947, before Sir William Webb, President of the Tribunal, at which time the prosecution was represented by Mr. Frank S. Tavenner, the then Acting Chief of the prosecution section, and the defendant SHIRATORI was represented by American counsel, Charles B. Caudle. As these proceedings will show, it was mutually

agreed upon between counsel for the prosecution and counsel for the defendant SHIRATORI with the approval of the President of this Tribunal that the said counsel for SHIRATORI should go to Peiping and interrogate the said Ott relative to the various communications sent to and received by him from his Government, which have been introduced as exhibits in this trial, together with other matters pertinent to the issue; that immediately upon his return he should submit a copy of the interrogation to the prosecution in order that they might do one of three things: (1) Send a prosecutor to Peiping to cross-examine Ambassador Ott on the interrogation; (2) Mail a questionnaire of a cross-examining nature regarding the interrogation to Ott for his replies thereto, or (3) if so desired, have Ott brought before this Tribunal for cross-examination on the interrogation.

The records of the clerk's office will show that immediately upon return of counsel from Peiping he filed, on the 25th day of May 1947, the original of the interrogation in the office of the clerk and delivered a duplicate original of the same to the prosecution. It is further called to the attention of the Tribunal that at no time thereafter did the prosecution make any attempt whatsoever to cross-

examine the said Ott by any of the three hereinabove described methods, although they did see fit to send interrogations to him in Shanghai, prior to his repatriation to Germany, in late August or early September 1947, relative to defendant OSHIMA. Yet, as aforesaid, not one word was asked relative to SHIRATORI.

(a) SHIRATORI's relation to Hitler, Ribbentrop and Ott. It has been clarified that SHIRATORI saw Ribbentrop only on two occasions, in April and in June 1939, and that, accordingly, Ribbentrop could not know SHIRATORI very well.[226-A.] The prosecution has produced no evidence that SHIRATORI ever saw Hitler.

In the opening statement of the prosecution on 19 September 1946 it was stated: "Former Ambassadors OSHIMA and SHIRATORI, who had resigned upon the failure to conclude the Tripartite military alliance, worked in confidential cooperation with the German Embassy in this program, and the German Ambassador was directed by Ribbentrop to keep in close touch with these two collaborators."[227.]

As to the former part of this prosecution's

226-A. Tr. 34137, 24481-82, 34138-139.
227. Tr. 5860.

statement, we will explain later. As to the latter part, it seems that the prosecution relied on exhibit 507,[228] in which it was stated as follows: "SHIRATORI who will soon return to Tokyo from his post of Ambassador in Rome, will also work in this idea." However, according to the original German text of this exhibit, it is gramatically quite clear that the above sentence is not a part of Ribbentrop's instruction to Ott, but a part of an unknown person's talk to Ribbentrop, which Ribbentrop quoted in indirect narration in his telegram to Ott. The Language Arbitration Board corrected the above sentence (English translation from the German original), as follows: "SHIRATORI, who would soon return to Tokyo from his post of Ambassador in Rome, would also work along these lines."[229]

Further, as was shown on page 8, Chapter VII of the summation, this so-called instruction to Ott related only to better Russian-Japanese relations and not as alleged, better German-Japanese relations. Moreover, SHIRATORI testified in his affidavit about the above sentence in exhibit 507 that he promised nobody, nor gave anyone to understand, that he would

228. Ribbentrop's telegram to Ott, Tr. 5860.
229. Tr. 13097.

cooperate with the German Embassy in Tokyo along the line indicated in that document; that whatever activities he might have engaged himself in after coming home from Europe were entirely of his own accord and in his own judgment, and that he had absolutely no connections whatever, either with the German or the Italian Embassy in Tokyo.[230]

Other than exhibit 507 above, the prosecution failed to produce any evidence which testified that Ott was directed by Ribbentrop to keep in close touch with SHIRATORI.

SHIRATORI testified further, in his affidavit, that he was never in occupation of position of responsibility in the Japanese Government at any period during Ambassador Ott's sojourn in Japan; that therefore there could not be any question of official contact between himself and Ott; that, privately, he and Ott were not on any especially friendly terms, and that it was entirely on social occasions that they saw each other.[231]

Witness SAITO testified that though during their advisorship to the Foreign Ministry, both SHIRATORI and himself often met the German Ambassador in a social way but there was, to the best of his

230. Ex. 3595, Tr. 35045-046.
231. Ex. 3595, Tr. 35052.

knowlege, nothing to indicate that SHIRATORI was on any specially intimate terms with Ott or any other member of the German Embassy in Tokyo. SAITO did not believe SHIRATORI to have been a Germanophile, for he remembered a remark he had made at a gathering of Foreign Office officials during the Pacific War to the effect that it was no less objectionable for them to be pro-Axis as to be pro-Anglo-Saxon.[232].

232. Tr. 34963.

Ott testified in ex. 3579 (233) as follows:

1) Ott met SHIRATORI for the first time about October or November, 1938, prior to his departure for Rome as Japanese Ambassador to Italy, on the occasion of a farewell dinner given by the Italian Ambassador in Tokyo (234).

2) Ott never discussed with SHIRATORI, prior to his departure to Rome, any alliance between Japan, Germany, and Italy; Ott himself didn't know of negotiations having been started (235).

3) Ott did not hear from SHIRATORI at any time during his stay in Europe (236).

4) Ott met SHIRATORI the second time after his return to Tokyo sometime during the latter fall of 1939 at an official function given by the Italian Ambassador; they met rarely thereafter within the next several months and their meetings were social, and no political matters, and particularly the German-Japanese-Italian Alliance, were discussed during that time (237).

5) "The conclusion of the German-Russian Non-Aggression Pact in August, 1939, struck Japan as a

(233) Interrogatory of Ott made on 18 May 1947 by Chas. B. Caudle, counsel for SHIRATORI, at Peiping, tr. 34,849-904
(234) Tr. 34,852
(235) Tr. 34,852
(236) Tr. 34,853
(237) Tr. 34,854

surprising blow, and caused the resignation of the HIRANUMA cabinet. All negotiations about the Alliance were stopped and relations between Germany and Japan cooled down to a low degree. This situation existed until about the late spring of 1940, when the development of the war in Europe began to reflect in a changed Japanese mind. Also the strong economic measures taken by the U. S. Government against Japan contributed likewise to this change of the Japanese mind." (238)

I might add this is quoted directly from Ott's statement.

6) SHIRATORI was placed on the waiting list of ambassadors about three months after his return to Tokyo, at a reduced salary. He kept this status until late August, 1940, when he was appointed Advisor to the Foreign Minister (239). Ott had no official relations with SHIRATORI during this time and saw him occasionally in a private capacity (240).

7) SHIRATORI was not in occupation of any important position in Tokyo during the whole of Ott's sojourn in Japan and during Ott's personal acquaintance with him except as Advisor to the Foreign Minister (241).

(238) Tr. 34,855
(239) Tr. 34,855
(240) Tr. 34,856
(241) Tr. 34,899

(b) Ott Knew That SHIRATORI Did Not Have So Great an Influence:

1) SHIRATORI did not appear to Ott to have any influence in important affairs of state, or to carry any weight with Foreign Minister MATSUOKA in the position as advisor to him (242).

2) Judging from later developments and proven facts and events as Ott knew now, SHIRATORI never carried any weight with his government nor influenced the policies thereof, either foreign or domestic, during Ott's acquaintance with him in Tokyo (243).

(c) Ott Knew That SHIRATORI Was Very Outspoken and Talkative.

Ott heard SHIRATORI several times criticize in a most outspoken manner measures announced by the Japanese Government. SHIRATORI appeared to Ott sometimes to be a rather talkative man (244).

(d) The prosecution, relying on ex. 800, contended:

"SHIRATORI from time to time communicated important information to the German Ambassador in Japan." (245)

(242) Tr. 34,899
(243) Tr. 34,899-900
(244) Tr. 34,899
(245) Tr. 16,923; ex. 800, tr. 7968

However, as we will explain later, the prosecution misapprehended the said ex. 800, and it was not SHIRATORI but Acting Vice Foreign Minister YAMAMOTO who gave information to Ambassador Ott, ex. 3579, tr. 34,886.

Further, Ott testified that SHIRATORI never furnished to the German Embassy in Tokyo any news or information concerning an important policy or decision of his government, or any state secret in general (246).

(e) Ott's Personal Relationship with Ribbentrop:

1) Ott testified in his interrogatory as follows: (247)

"The relations between Germany and Japan went up and down several times during the years of my own experience, 1934-1943. When the Japanese Government in the face of dramatic changes and actions in the German policy, acted in their own way, Ribbentrop reacted often with marked distrust and decision. He had a strong tendency for 'wishful thinking,' and for overlooking the fact and forces upon which the Japanese Government used to base their decisions.

"When I (Ott) often tried to moderate the views and instructions of Ribbentrop, I awakened a mounting distrust and suspicion that my attitude was

(246) Tr. 34,898-899
(247) Ex. 3579, tr. 34,900-902

influenced by undue consideration of those Japanese tendencies which were either indifferent or opposed to friendly relations between Japan and Germany, and that I had not sufficient contact with other groups of the political Japanese life. I had to presume that this opinion of Ribbentrop would spoil the success of my moderating work and drive him even more to other sources of information which were more in line with his own ideas.

"In order to avoid such a development, I carried on personal relations with the few Japanese who were personally known to Ribbentrop, and whom I had theretofore been instructed to contact (248).

"I mentioncd these people, among them Ambassador SHIRATORI, and stressed their cooperation on occasions, especially when I tried to give weight to my opinions or suggestions contrasting Ribbentrop's ideas or instructions or when it seemed necessary to confirm him that my report covered the situation from every point of view."

2) In exhibit 504 (tr. 6108-11), Ott's telegram dated 6 May 1939, Ott reported:

"From the Foreign Ministry a senior official who stands especially close to Ambassador SHIRATORI

(248) Prosecution failed to produce in evidence this instruction, which concerned SHIRATORI; also the defense for SHIR. could not have found it.

let me know personally that in the entire government a deep cleft between friends and enemies of the alliance had formed." (249)

The above information had nothing to do with SHIRATORI, who was in Europe at that time. And Ott testified that he mentioned the name of SHIRATORI in his telegram above for the reason that it might add to the weight of the report in the mind of the German Foreign Minister (250).

3) In exhibit 516 (tr. 6152-53), Ott's telegram dated 12 June 1940, Ott reported:

"The Embassy is still endeavoring to stir up Japanese ill-feeling against America by influencing the press and leading political personalities in a way deemed proper. I myself have expressed the thought in many discussions with leading political personalities; as for example, KONOYE, SUETSUGU, and KUHARA, that the interests and activity of America ... (one group of words garbled) in the Pacific area and therefore a conflict between Japan and America is in the long run unavoidable.

"In confidential cooperation with the Embassy, Ambassadors OSHIMA and SHIRATORI and circles

(249) Tr. 6110 and 34,863
(250) Tr. 34,863

closely connected with them are operating in the same direction." (251)

The prosecution insisted, relying on this telegram, that SHIRAYORI and OSHIMA in the summer of 1940, worked in confidential cooperation with the German Embassy in Japan in stirring up Japanese ill-feeling against America by influencing the press and political leaders (252). However, Ott testified about the background of this telegram as follows:

"The collapse of France was obviously imminent and the British situation was very precarious, centering round Dunkirk. The only effective relief which might keep up the resistance power of England and work against the early settlement of the war could come from the United States of America, and was asked from them very urgently. Therefore, the German Government endeavoured to hamper such a relief, and considered as a useful way a continued tension in the Pacific area, which might prevent the United States from removing their attention and fighting forces from the Pacific to the Atlantic. It was a complicated matter to advance such a policy upon Japan, because the Japanese attitude was much divided, as it is given in the first part of my report. In this situation I got instructions

(251) Tr. 6152-53
(252) Tr. 16,917-918

to back an Italian protest obviously against a Japanese measure in favour of the United States and contrary to the Italian interests -- I do not recall the case exactly. When I presented my objections to the Reich Government's intentions, I had to avoid the permanent distrust of Ribbentrop that I was inclined to block his aims. Therefore, I stressed in paragraphs Nos. 3 and 4 of my report that I was working in my own way, and pointed to the cooperation of SHIRATORI and other Japanese persons known to Ribbentrop in order to impress him and to succeed in my objections." (253)

Ott testified further that he did not mean in the last paragraph of the above telegram that the Embassy, SHIRATORI, etc., worked together in a common programme, based upon a mutual understanding and common agreement, because there was no such agreement; that SHIRATORI, as far as Ott knew, warned by private talks and sometimes by the press against the courting of the United States, after they had enforced hard economic measures upon Japan; that it was not a common plan taken by Ott, SHIRATORI, etc.; that Ott had only private talks with each of them separately; that Ott was never in the company of SHIRATORI, etc., at the same time for the purpose of carrying out this so-called political

(253) Tr. 34,872-873

cooperation; that Ott emphasized the close cooperation in order to give weight to the message, and to carry through his objections, and that Ott might add that he used the names of KONOYE and SUETSUGU for the same reason (254).

SHIRATORI gave lectures and interviews after he had returned from Rome. However, he testified in his affidavit that whatever activities he might have engaged himself in after coming home from Europe were entirely of his own accord and in his own judgment, and that he had absolutely no connections whatever with the German Embassy in Tokyo (255).

4) About exhibit 1272 (tr. 11,351-358), Ott's telegram dated 17 May 1942 recommending various German decorations (256), Ott testified that he recommended SHIRATORI on this occasion of a decorations list for the Tripartite Pact, because he was personally known to Ribbentrop and had been the advisor to the Foreign Minister at the time of the conclusion of the pact, in order to lessen the opposition of the Reich's Foreign Minister against the whole matter of decorations, and that, judging from later developments, Ott did not think that the efforts of SHIRATORI, and particularly

(254) Tr. 34,873-74
(255) Tr. 35,045-046; refer also to witness MISHIMA's testimony, tr. 35,007-008
(256) Tr. 11,351-358

the results of such efforts to further Japanese-German relations, deserved the award given to him (257). We will explain about exhibit 1272 later more fully.

5) SHIRATORI testified in his affidavit that much of Ott's information, such as it was and false as it was, he was informed, came from the confidential secretary of Prince KONOYE, one OZAKI, Hidemi, who was later tried and executed; that OZAKI was a communist and associate of Zorge, a German by birth but, as SHIRATORI was further informed, a Russian spy who had worked his way as a newspaperman into the confidence of Ott, and that it seemed that SHIRATORI's name was sometimes used merely to give credit to this sort of information without his knowledge, as borne out in Ott's interrogatories (258). Further, as SHIRATORI was known to be very outspoken and talkative, this made it opportune for Ott to use his name as aforesaid, to give credence to his communications and thereby allay the suspicions of Ribbentrop. Also, whether by force of habit or not, Ott often used SHIRATORI's name misleadingly when the name of some other person would have sufficed (258-A).

(257) Tr. 34,893
(258) Tr. 35,052-053
(258-A) Tr. 34,898

We will now treat the telegrams of Ott and other German documents one by one:

(a) Exhibit 502 (Tr. 6097-6102): This is Ribbentrop's telegram to Ott dated 26 April 1939, which is the reply to a telegram sent by Ott to Ribbentrop, wherein he stated he had heard through his Military Attache, who had obtained the information from some members of the Japanese Army, that negotiations were being carried on between Germany, Italy and Japan for a further strengthening of the Anti-Comintern Pact, and requesting information as to the matter (259).

It will be noted that in this particular document Ribbentrop goes to great lengths to impress upon Ott the confidential and ultra-secret activities theretofore and then being carried on as between him and OSHIMA, and him, OSHIMA, SHIRATORI and Ciano on other occasions. He cautions Ott to make no mention of such negotiations under any circumstances, and goes even further to say not even to discuss it with the Italian Ambassador, who, according to information he (Ribbentrop) had learned from Ciano, had not been informed regarding the matter.

The prosecution in its summation (UU-51) goes

259. Tr. 34,852-53 and 34,861

to great lengths to try to impress upon this Tribunal the secrecy in which such negotiations were carried on, using the aforesaid exhibit, and going further to say that the Japanese Government's proposals to the German and Italian Governments were never transmitted officially by SHIRATORI. (It is interesting to note the distinction the prosecution makes between activities of an official capacity and an individual capacity in this regard, and then takes exactly the opposite viewpoint as pertains to speeches and writings made by one in an official capacity in relation to those made in an individual capacity, where they contend there is no difference.)

Now, it must be remembered that the original negotiations for the strengthening of the Anti-Comintern Pact began some time in the middle of 1938, even before OSHIMA was made Ambassador to Germany and had been carried on to a great extent for nearly a year without Ott having been officially or even semi-officially notified of such. This further goes to show why Ott felt that Ribbentrop distrusted him. It is also logical to conclude that when Ribbentrop received a wire from Ott requesting information on all negotiations up until that time, Ribbentrop had to find some means, or use some lang-

through channels, without Ott having been informed by his Government of any such activities. It is only natural to assume, as aforesaid, that Ribbentrop "doctored" his communications to Ott, to cover up his(Ribbentrop's) utter disregard of Ott during the negotiations.

Now, at this period where do we find SHIRATORI and what was he doing? Why, the prosecution brings out themselves that SHIRATORI was making statements to the press and otherwise publicizing the negotiations (Tr. 34,140), and SHIRATORI admits in his affidavit that he did just that for, as he contends, he was more interested in the world knowing of the negotiations than he was in the consummation of the treaty for reasons already set forth herein. (Tr. 35,038, line 23; 35,039.)

(b) Exhibit 504:[263] This is Ott's telegram to Ribbentrop dated 6 May 1939, and contains the following passage:

"From the Foreign Ministry a senior official, who stand especially close to Ambassador SHIRATORI, let me know personally that in the entire government a deep cleft between friends and enemies of the alliance had formed."[264]

263. Tr. 6103-7, 34,862-3
264. Tr. 15,744-5; 34,141-5; 34,864-5

Here we find Ott with his ear to the ground, true to Ribbentrop's instructions, to seek out and forward all information he could get, and all the while SHIRATORI is in Rome. This exhibit has been treated already in item 2 of (e) of this Chapter XII.

(c) Exhibit 2198:[264] This consists of two telegrams, one from Ott to Ribbentrop dated 11 August 1939,[265] and the other from Ott to the German State Secretary dated 18 August 1939,[266] concerning negotiations for a Tripartite Alliance.

The first alleged telegram advised Ribbentrop of purported happenings at the Five-Minister Conference on 8 August, 1939, wherein, according to Ott, War Minister ITAGAKI resolved to resign his post if the matter could not be settled by 15 August, and further, according to Ott, would entail the resignation of OSHIMA and SHIRATORI. Ott further states in this telegram that the War Minister would keep Germany advised through OSHIMA and SHIRATORI, by-passing the Foreign Minister.

Now, Ott testified about his telegram, Ex. 2198, that this was the only case he was informed of where the War Minister by-passed the Foreign Minister

264. Tr. 15,744-5; 34,141-5; 34,864-5
265. Tr. 34,142-3
266. Tr. 34,145

in communication with SHIRATORI about these negotiations. He stated further that it was a matter of extreme urgency because the answer had been requested within four days; that by sending through the usual channels, there was a possibility of delay; that he had no knowledge of what happened immediately thereafter, but that on August 29 the Japanese Cabinet resigned, following the non-aggression pact between Germany and Russia, and that afterwards all negotiations between the three powers ceased.[268]

However, the Foreign Office, the War Ministry and the Navy Ministry were using different telegraphic codes from and to their respective representatives, and, therefore, it was quite impossible to make direct exchange of telegrams between the War Minister and the Japanese Ambassadors in foreign countries.[269] The defendant ITAGAKI testified, as a witness, to the effect that from the standpoint of the organization or system of the Japanese Government, or actually speaking, he could not possibly do such a thing, as to send a telegram to a Japanese Ambassador abroad and that actually he had never sent such a telegram.[270] Also, the defendant OSHIMA, as a

268. Tr. 34,865
269. Tr. 38,723, Ex. 3885; Tr. 38,725, Ex. 3886
270. Tr. 30,336-7

(e) Exhibit No. 507:[274] This is Ribbentrop's telegram to Ott, dated 9 September 1939, and we have already treated it in item (a) at the beginning of this Chapter XII. Also, we have shown in this chapter the fact that SHIRATORI did not take the active part predicted in the exhibit.

(f) Exhibit No. 511:[275] This is a telegram to German State Secretary signed by Stahmer-Ott, dated 23 February 1940, and contains the following passage:

"After my arrival here I found such Japanese already known to me as OSHIMA, SHIRATORI, TERAUCHI, ISHII, etc., in an unchanged friendly attitude and ready for every support."[276]

Ott testified about this telegram to the following effect: The message was sent by Stahmer, but due to the regulations for sending of cypher telegrams from the German Mission abroad to the Home Government, the Chief of Mission, that is, Ott, had always to sign such a telegram for expedition. Stahmer paid a private visit in Ott's company to SHIRATORI, due to the instructions of Ribbentrop to

274. Tr. 6126-30
275. Tr. 6140-42
276. Tr. 6141; also refer to Tr. 16,917 (prosecution contention relying on this exhibit).

witness, denied the above communication from the War Minister, in the course of his cross-examination.[271] If the wire was sent, although the above shows the impossibility of such having occurred, Ott gives his version of why such recourse was used and further, that it was the only time he ever learned of such procedure. In any event, the circumstances surrounding this matter are so confusing and conflicting that the document itself loses all weight, and is not worthy of consideration.

(d) Exhibit 498:[272] This is Ott's telegram to German State Secretary, dated 8 September 1939, and contains the following passage:

"The Ambassador in Moscow (note: it should be 'Rome'), SHIRATORI, will return from Rome, since at that time he had taken up the post of Ambassador purely in the expectation that he would succeed in concluding an Italian-Japanese-German military alliance."

Ott stated about this telegram that the information was based on hearsay.[273] Further, we have already treated this matter in detail in item (b) of Chapter V above.

271. Tr. 34,142; 34,144; 34,145
272. Tr. 6082-3; refer also to prosecution's contention relying on Ex. 498, Tr. 16,914.
273. Tr. 34,866

get in touch with the personal acquaintances of Ribbentrop in Japan. At that time, Stahmer was attached as a representative of Ribbentrop to the mission of the Duke of Saxe-Coburge Gotha, sent to Japan for presenting Hitler's congratulations on the occasion of the 2600th anniversary of the founding of the Japanese Empire, and to the United States as a goodwill mission to the Red Cross Society. 277

Stahmer testified to the following effect: He met SHIRATORI first in April, 1939, when SHIRATORI was invited to Berlin during the birthday of Hitler; Stahmer saw him twice during lunch and dinner, and they talked together, but not politically. The next time he met SHIRATORI was in February, 1940, during his short, first stay in Japan as a member of the mission of the Duke of Saxe-Coburge-Gotha. He saw SHIRATORI at that time twice; onee during a dinner in the German Embassy and a second time on occasion of a Japanese lunch in Tokyo. On this second occasion Stahmer saw SHIRATORI together with some other Japanese, and they talked about general topics. He sent a telegram, wherein he gave a short survey of his impressions of the general political situation, which was a combination of everything he heard from

277. Tr. 34,868-70

the Japanese whom he knew, from the people in the German Embassy, and from the German journalists. The telegram contained a passage that he found such Japanese already known to him as OSHIMA, SHIRATORI, TERAUCHI, ISHII, etc., in an unchanged friendly attitude and ready for every support, but that was Stahmer's personal opinion and the impression he got from his conversation with these Japanese. He did not talk with any of them concerning the alliance between Germany and Japan, because at that time the German-Japanese relation was not very good and there was no possibility of such an alliance; he gave up any hope and avoided the talk on that line. Also, these Japanese, including SHIRATORI, did not express any readiness to him at that time to support an alliance with Germany.[278]

Further, we would like to call the attention of the Court to the fact that SHIRATORI occupied no official status other than that of being on the ambassadorial waiting list during all this time.[279]

(g) Exhibit 516:[280] This is Ott's telegram to Berlin dated 12 June 1940. We have already

278. Tr. 24,402-3; 24,479-80; 24,519; 24,521-23 and 24,553-54.
279. Refer to Ex. 3575.
280. Tr. 6152-53

treated this exhibit in item (3) of this Chapter above.

(h) Exhibit 523:[281] This is Ott's telegram dated 24 June 1940 and contains the following passage:

"Also Ambassador SHIRATORI, who is ever more frequently named as the coming Foreign Minister, advocated a Non-aggression Pact with Russia in an interview yesterday with the Yoiuri."[282]

This is one of SHIRATORI's activities as a writer and lecturer, about which we will explain later in detail. We would like also to add that he was, at that time, on the ambassadorial waiting list.[283]

(i) Exhibit 536:[284] This is Ott's telegram dated 20 July 1940 and contains the following passage:

"MATSUOKA's appointment (note: as Foreign Minister) was generally approved by the press, as a new orientation of Japanese foreign policy is expected from him with certainty. OSHIMA and SHIRATORI . . . (1 group garbled) expressed themselves in a similar vein at press interviews."[285]

281. Tr. 6176-77
282. Tr. 6177, Tr. 34,874-875
283. Ex. 3575
284. Tr. 6261-62
285. Tr. 6262

The prosecution, relying on this exhibit, contended that SHIRATORI lent, by the above press interview[286] the weight of his influence to MATSUOKA's policies. However, SHIRATORI was, at that time, still in the ambassadorial waiting list and had almost no political influence. The telegram is another example of using SHIRATORI's name by Ott in the sense explained above.

(j) Exhibit 538:[287] This is Ott's telegram dated 2 August 1940 and contains the following passage:

"Ambassador SHIRATORI informed confidentially that he had declined the post of Vice Foreign Minister. It is to be considered that he will not be appointed permanent advisor to the Foreign Minister. He believes he can exercise a far-reaching influence in this capacity."

About this telegram, Ott testified to the following effect: SHIRATORI did get the appointment as advisor to the Foreign Minister, but he did not exercise a far-reaching influence in such a capacity, as later developments, especially during the negotiations for a conclusion of the Tripartite Pact proved. By his official relations with several Vice-Foreign Ministers'

286. Tr. 16,918 287. Tr. 6265

of Japan, Ott realized that a Vice Foreign Minister was the permanent representative of the Foreign Minister in all dealings with Foreign Missions, which the Foreign Minister did not take up personally. Furthermore, he was responsible for the administration and personnal matters of the ministry. His position was comparable to the Under Secretary of State of the United States. The advisor had none of these functions, and his effectiveness depended upon the personal influence he had with the Foreign Minister. Ott did not observe that SHIRATORI had any personal influence with MATSUOKA, even during the negotiations for the Tripartite Pact. Ott occasionally got the impression of a certain mistrust between MATSUOKA and SHIRATORI by remarks they made to him about each other of a critical nature.

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Further, this telegram from Ott (Ex. 538) was entirely contrary to the facts, as there was a vast difference in the powers, authority and responsibility of a Vice Minister as compared to those of an Advisor, which distinction was fully explained by the witness SAITO, who served as a Foreign Advisor at the same time as SHIRATORI. Also, SAITO

288. Tr. 34,875-77

was given to understand at the time that SHIRATORI's appointment as advisor was due mainly to Prince KONOYE's recommendation. Moreover, MATSUOKA was a man of great self-confidence, who would do everything by himself, rarely asking the advice of others. SAITO could, therefore, state with truth that SHIRATORI's advisorship under MATSUOKA was more or less nominal. He was not asked to advise on hardly any subject, least of all on important diplomatic questions.[289]

Furthermore, we would like also to refer to the testimony of SHIRATORI as a witness in this matter,[290] as well as to our explanation in Chapter VIII above.

(k) Exhibit 548:[291] This is Ott's telegram dated 23 August 1940 and contains the following passages:

"1. The Government announces an extensive revisement of the Foreign Service . . . The Foreign Minister declared to the press, that this action had become necessary in order to secure the new foreign policy introduced by him and to bring the Japanese Foreign Service into coordination with the

289. Tr. 34,962-3; 34,957 and 34,958
290. Tr. 35,047-49
291. Tr. 6296-98

new Japanese conditions . . . The drastic action of the government evidently intends in the first place to render harmless the exponents of pro-Anglo-Saxon courses. This is also strongly underlined by the press. . . .

"2. With the aim of further preparation of suitable actions for the adjustment of State affairs on an authoritarian model, the government had formed a commission of 24 leading personalities. Ambassador SHIRATORI was appointed the representative for foreign political matters in the commission. The commission consists mostly of followers of the reform movement and of the policy of cooperation with the Axis powers which is constantly demanded by this movement."

As to the former part, witness SAITO testified that the wholesale dismissal of Japanese diplomats by MATSUOKA and OHASHI (Ex. 548) took place before the appointment of the advisors; that as SAITO's appointment as advisor was then definitely decided upon, he was admitted into counsel over this matter, but that SHIRATORI had nothing at all to do with it, and that, in fact, as an Ambassador on the waiting list, he was counted among the senior diplomats to be dismissed (292).

We would like also to refer to the testimony of SHIRATORI as a witness in this matter (293).

As to the latter part, Ott testified to the following effect:

By that time there were various rumors about interior measures taken by the new cabinet. The reported formation of a commission was one of these rumors. He was never informed who else comprised this commission. After dispatching the message, Ott never heard again of such a commission or of any of its activities. He had to consider that information reported by him was erroneous. (294)

Now, witness ARIMA testified that the Imperial Rule Assistance Association was organized on the basis

(292) T. 34,958-59
(293) T. 35,047-48
(294) T. 34,878

of the report of the Arranging (or Preparatory or Preparation) Committee for the New National Structure; that SHIRATORI was among those who were originally invited by Prince KONOYE to form the Committee, but that he did not take any active part in the discussions of the Committee, and that, in fact, he generally absented himself from its meetings (295).

It seems that the prosecution was of the opinion that this Preparation Committee and the Commission of 24 leading personalities mentioned in Exhibit 548, were one and the same; and the prosecution contended that though Ott attempted to impeach his own report in Exhibit 548, this original official report was true and correct (296).

However, the prosecution failed to show that the Preparation Committee consisted of 24 members. Moreover, the Japanese are not accustomed to call a commission or committee by the number of its members, as commission or committee of 24, etc.

At any rate, in case we presume that the Preparation Committee and the Commission of 24 were one and the same, it must, nevertheless, be said that the fact that Ott repudiated his own official report clearly shows how shaky and haphazard generally his reports were.

(295) T. 35,020-21
(296) T. 37,987-88

(1) Exhibit 562 (297): This is Ott's telegram to the Reich Foreign Minister dated 31 January 1941 and contains the following passage:

"Sharpened attitude of American Government has heightened the political tension of Japan considerably and has brought conflict with America closer.

"Unity of government and nation behind the Tripartite Pact has been unmistakably proved in the Diet negotiations, economic circles are also decreasing their resistance. The government is trying to scare America from entering the war by threatening attitude, armament measures, and sharp speeches in Diet and press.

"In contrast to this, activistic circles demand preventative attack on Singapore as the key position in the West Pacific Ocean. They expect to deprive America by a surprise action of the possibility of military warfare in the Pacific Ocean or to render it difficult. This minority group is under the leadership of Admiral SUETSUGU, Ambassador SHIRATORI, and has the support of the young officers' corps and individual high leaders of the Army and Navy." (298)

Ott testified about this report to the following effect: Ott got this information during the month

(295) T. 35,020-021
(296) T. 37,987-88
(297) T. 6429-34
(298) T. 6429-30

of January 1941, from different members of the German Embassy, and from a number of Japanese of various kinds with whom he had talks. As the report pointed out in the first paragraph, it was a time of heightened political tension, therefore, a lot of sharp political discussions were going on. However, they were not official, but only the gossip of the day. Ott was not afforded any proof of SHIRATORI being a leader among such a group (299).

From this testimony of Ott, it must be concluded that the information is without basis of fact. Moreover, we would like to call the attention of the Court also to the fact that, as already mentioned, Ott testified that he used the names of KONOYE, SUETSUGU and SHIRATORI in order to give weight to his report (300).

Furthermore, witness SAITO testified in this matter to the following effect: SAITO knew nothing about SHIRATORI's acting as a leader of "activistic circles" ("minority group") demanding preventative attack on Singapore in January 1941, as stated in Exhibit 562. From what SAITO knew, as a friend and colleague, about SHIRATORI's diplomatic views, he was by no means an advocate of Japan's southward advance (301).

(299) T. 34,879-880
(300) T. 34,874
(301) T. 34,964

(m) Exhibit 1073 (302): This is Ott's telegram to Ribbentrop dated 18 May 1941, and contains, at the end of a long political report, the following passage:

"Finally, the activist group which is closely working together with the Embassy, is at present weakened by the serious illness of SHIRATORI, who has left the political struggle on account of a serious and apparently incurable illness." (303)

This is a typical example of Ott's reports, in which he tried to show to Ribbentrop that he did not fail to consider opinions of every group of the political Japanese life, and especially to keep contact with the few Japanese, including SHIRATORI, who were personally known to Ribbentrop, and whom Ott had been instructed to contact. In this respect, we respectfully refer to the testimony of Ott, mentioned in item (e) of the first part of this Chapter XII (304). We would like also to call attention to the fact that SHIRATORI lay, at that time, in a hospital unconscious, as mentioned in Chapter IX above.

(n) Exhibits 3829 and 1113: Exhibit 3829 is Ribbentrop's telegram to Ott dated 3 July 1941, which was offered in evidence by the prosecution in the

(302) T. 9909-13
(303) T. 9912-13
(304) See also T. 34,900-902

rebuttal in order to rebut the attack of Ott on Exhibit 1113, hereinafter set forth, whereby Ott claimed it was a casual, neighborly visit of no significance, and to further rebut SHIRATORI's statement that the visit was "quite an informal one" as hereinafter set forth, and to show the importance of SHIRATORI and his activities with his so-called German collaborators (305). Exhibit 3829 reads as follows:

"You (Ott) reported sometime ago that SHIRATORI was unfortunately having to leave political discussions there as a result of serious illness. When I (Ribbentrop) asked the Japanese Ambassador to Rome when I met him in Venice how SHIRATORI was getting along, he was very astonished to hear of an illness and claimed to have knowledge that SHIRATORI was as well as ever. He had only recently had good news from him. I request a telegraphed report on SHIRATORI's true state." (306)

With respect to Exhibit 1113, the same being Ott's telegram to Ribbentrop dated 7 July 1941, four days after receipt by him of the above quoted wire from Ribbentrop - the prosecution read the latter part of this telegram (307) and the defense read the former part (308).

(305) T. 37,991
(306) T. 37,992
(307) T. 10,157-58
(308) T. 34,948-49

The entire text is as follows:

"Had the opportunity to talk personally to SHIRATORI in a spa, where he is living on account of illness. At this occasion he amplified as follows to news regarding his illness already conveyed to me and the Italian Ambassador from his intimate circle: Since the end of April he is suffering from kidney trouble and was in danger of his life for weeks. Recently there had been an improvement, so that the doctor hopes for recovery until Fall. He has had to abstain from all political work and today, with me, has had his first talk outside of his closest circle. SHIRATORI made the impression of needing rest and being mentally tired; he visibly suffered from a difficulty at walking, and also complained of it.

"I transmitted him the best wishes of the German Foreign Minister for his recovery, which evidently greatly pleased him. He asked me to thank the German Foreign Minister and to assure /him/ that as soon as he was able to take up his political work again, he wants unchangedly to advocate an active course for Japan, and that he regarded the entry into the war against Russia as the most urgent goal."

Ott testified about this telegram to the following effect: At that time, SHIRATORI was residing at

Hayama, which is a seaside resort about two hours drive from Tokyo. Ott went many times in the summer to the seaside near Hayama where he had his own villa, as many foreign diplomats had. On one of these occasions he visited SHIRATORI. The way to his residence was a circuit of just five minutes on the way to his own villa. Ott had been directed by Ribbentrop to convey to SHIRATORI his best wishes for his recovery. However, Ott did not make a special trip to this place for this purpose, but chanced to go by during his visit to his own villa. Ott reported SHIRATORI suffering from kidney trouble, as he had been informed, but he found out later that it was really of a mental nature. At that time SHIRATORI gave him the impression of being mentally tired (309).

SHIRATORI testified in his affidavit as follows:

"It is a fact that the German Ambassador called on me at my cottage in July, 1941. It was a surprise visit and quite an informal one. I was still in a very weakened condition mentally and physically. I do not retain any clear recollection of that interview, but it could never have been such as his cable to Berlin (Exhibit 1113) would seem to suggest." (310)

A comparison of the telegram sent by Ribbentrop to Ott (Exhibit 3829) and the reply sent by Ott to

(309) T. 34,883,886
(310) T. 35,051

Ribbentrop (Exhibit 1113), shows specifically:

1) that if Ott's visit was not a casual one, as we contend, it certainly had no political significance in that he was only requested to find out and report the physical condition of SHIRATORI, which had been confused in the mind of Ribbentrop by Ott's telegram of 18 May 1941 (Exhibit 1073), and Ribbentrop's conversation with the Japanese Ambassador in Rome;

2) that Ribbentrop had a mounting distrust and suspicion of Ott's reports, or at least so Ott felt during the entire tenure of his ambassadorship in Japan;

3) that contrary to Ott's telegram to Ribbentrop, he (Ribbentrop) did not instruct Ott to convey to SHIRATORI his best wishes for his recovery;

4) further, that this was not a particular special mission requiring an urgent reply, in that fully four days elapsed between the time Ott received Ribbentrop's telegram and the time he forwarded his reply, although the place of SHIRATORI's residence at that time was hardly two hours from Tokyo.

As to SHIRATORI's illness, we have already explained in detail in Chapter IX above. It is quite clear from the explanation there that, especially during the first of July, 1941, when the aforesaid Ott's visit occurred, SHIRATORI was still too ill to take responsibil-

ity for any expression of his opinions. This applies also to the so-called SHIRATORI's statement at the end of Exhibit 1113, that, as soon as he was able to take up his political work again, he wanted unchangedly to advocate an activist course for Japan, and that he regarded the entry into the war against Russia as the most urgent goal, in case we presume the truth of that statement. SHIRATORI denied categorically such a statement in his affidavit (312).

Furthermore, we respectfully refer also to our explanations in this matter in Chapters III and IX above.

(o) Exhibit 800: This is Ott's telegram dated 1 August 1941, and the prosecution read only a part of it (313). As we have already explained in Chapter III above, the prosecution misapprehended the exhibit. The entire statement in Exhibit 800 was made by the acting Vice Foreign Minister YAMAMOTO, excepting the underlined part in single quotation marks in the following sentence, which part alone relates to SHIRATORI:

"When I (Ott), because of rumors, 'which SHIRATORI, whom I visited again during the past days in his place of convalescence, had pointed out to me as being serious,' anticipatedly asked whether Japan intended

(312) T. 35,051
(313) T. 7967-68

to start her active advance with demands on the Soviet Government, the Vice Minister marked this way as the best method of finding a defensive excuse for a Russo-Japanese attack in face of the neutrality agreement."

(314)

Ott testified about Exhibit 800 to the following effect: Ott held the conversation set forth in the exhibit with Minister Secretary YAMAMOTO, commissioned with the affairs of Vice Foreign Minister. SHIRATORI was not present there. Ott had visited SHIRATORI during the past days in his place of convalescence. This visit was another one similar to the previous visit mentioned in Exhibit 1113 (314-A). Now, SHIRATORI has no recollection about this second visit by Ott in July 1941, and therefore, he did not touch it in his affidavit. Though Ott testified that it was another visit, the defense cannot help to presume that Ott did not, in reality make this second visit, but merely used SHIRATORI's name in order to give weight to his report.

(314) T. 7968
(314-A) Ex. 3579, T. 34,886

Whalen & Morse

(p) Exhibit 608 (315): This is Ott's telegram to the Reich Foreign Minister dated 5 December, 1941, and contains the following passage:

"SHIRATORI explained to me that the leading circles of Japan have come to the conviction that Roosevelt wants now to enter the war by means of a conflict in the Far East. From various sides the opinion has been advocated that the United States are now sure of the coalition of the ABCD States and Russia, which has been striven for for more than ten years. Therefore,Roosevelt believes that the moment for a settlement has come, since one cannot be certain of the adherence of these states in the future."

Ott testified about this exhibit to the following effect: Only the first sentence of the aforementioned passage (which is underlined) referred to SHIRATORI. He did not recall where he saw SHIRATORI at that time, but it was possible that it was another visit to his seaside villa. SHIRATORI still appeared to be in a state of convalescence. Ott did not think he reported to his government that SHIRATORI had recovered, at that time or before (316).

(315. Tr. 6662-65
316. Tr. 34,887-89)

SHIRATORI testified in his affidavit as follows:

"As to the other interview which General Ott alleges to have had with me after that date (IPS Ex. 608), I cannot recall it at all. As the Ambassador was at his seaside cottage only during the summer months, it is altogether impossible for me to make out how he could say that he had seen me in December, 1941, and discussed current questions with me, the more so since I had a slight relapse about that time (317) and was more than ever out of touch with the outside world." (318)

Now, Exhibit 608 is, as the document itself clearly shows, a very important telegram of Ott, in which he reported to Ribbentrop the attitude of the Japanese Government to the "Hull Note" of 26 November 1941, as well as the extremely strained relations between Japan and the United States. SHIRATORI had no official post since 22 July 1941; he remained convalescing in almost complete retirement at Hayama after his serious illness in the spring of 1941, and, moreover, he had a relapse and again suffered from insomnia and mental fatigue in December 1941 as we

(317. Ex. 3593, Tr. 35,018
318. Tr. 35,051-052)

already explained in detail in Chapter IX above.

Under these circumstances we must conclude that Ott again used SHIRATORI's name in this very important telegram to Ribbentrop in order to avoid Ribbentrop's distrust and suspicion, and to give weight to his report (319), though SHIRATORI, refraining from all political activities, could not have any political influence and was not able to get, not only officially but, also, as a layman, any information about the current situations, especially at that time. It is contended further that Ott did not, in reality, see SHIRATORI at this time either.

(q) Exhibit 576 (320): This is Ott's report to Ribbentrop, from the train, dated 25 March 1941, concerning military preparations in Japan, and entitled "Note on Situation in Japan." Ott had been recalled to Germany to be present during the MATSUOKA conference at that time (321). The report contains the following passage: "Ambassador SHIRATORI stressed also the necessity to tie up the English fleet."

Ott testified about this exhibit to the following effect: The note was sent while Ott was in Germany. He was called by his Government to Germany

(319. Refer to record pp. 34,900-902
320. Tr. 6477-80
321. Tr. 6475-76)

to be present during the visit of Japanese Foreign Minister MATSUOKA to Berlin. SHIRATORI was at that time in Japan. Ott met SHIRATORI some time, probably in February 1941, during a farewell visit before Ott left for Germany. The meeting was not of an official nature, but purely personal. SHIRATORI was a career diplomat, and at no time saw any service either in the Japanese Army or Navy (322), and the opinion expressed by him was only that of a layman, and not the opinion of a man versed in military tactics. The same opinion had been voiced to Ott during that period by other laymen (323).

Now, SHIRATORI was the advisor to the Foreign Office about in February, 1941. But, as explained in detail in Chapter VIII above, his position was a sinecure. He was never consulted by the Foreign Minister MATSUOKA on any matter of policy. Important documents and information concerning the cardinal policies of the government in foreign affairs were being kept from him.

Under these circumstances, it is quite incomprehensible that Ott placed in his "Note on Situation of Japan," Ex. 576, the aforesaid opinion of

(322. This is quite correct. See SHIRATORI's curriculum vitae, Ex. 3575.

323. Tr. 34,890-891)

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(322. This is quite correct. See SHIRATORI's curriculum vitae, Ex. 3575.
323. Tr. 34,890-891)

SHIRATORI side by side with the opinions of the Chief of the Naval General Staff, Admiral KONDO, and of the Chief of the General Staff, General SUGIYAMA, the highest authorities of Japan in military tactics. There is no other way than to conclude that it is also another example of using SHIRATORI's name by Ott in his report in order to avoid Ribbentrop's distrust and suspicion and to give weight to his message.

(r) Exhibit 1272 (324): This is Ott's telegram to his government dated 17 May 1942, and reads in part as follows:

"The Japanese Army have repeatedly approached the Military Attache with the request to recommend certain Japanese for receiving German decorations on the occasion of the Tripartite Pact.

"Besides above, it proved 2 or 3 more awardings.

"(2) Toshio SHIRATORI, born 8 June 1887 in Chiba, formerly Ambassador in Rome. Advisor of the Foreign Minister when the Tripartite Pact was concluded. For a long time he was the principal advocate of intimate cooperation

(324. Tr. 11,351-358)

with Germany. Member of the New Diet after having recovered his health, SHIRATORI will probably again play an important part in foreign and home politics. Order: Great Cross."

Ott testified about this exhibit to the following effect: For awarding German decorations the recommendations had to be made to Hitler by his Chancellory, which got the proposals from the various Reich Ministries, as the Foreign Ministry, War Ministry, etc. Ribbentrop was, for himself and for his personal favorites, rather anxious to get foreign decorations, and became very angry when he considered the Japanese Government too reluctant in bestowing a sufficient number of decorations upon German people. He succeeded in blocking in the Reich Government every award of decorations for Japanese for a considerable time. Consequently, the Japanese side became very insistent, and stressed the striking contrast with the Italian practice, where there was a sumptous flow of decorations.

In order to break this deadlock troubling the atmosphere in Tokyo, Ott eventually presented to Ribbentrop a list wherein Ott recommended decorations to be bestowed on the second anniversary of the

Tripartite Pact in September, 1942 (324-A). The German Protocol had provided that the Great Cross is the only class of decoration for which a person of Ambassador's rank is eligible. As this fact was well known to the Japanese Board of Decorations, the bestowal of a lesser decoration would have been considered by the Japanese side principally as most unfavorable, as Ott's long experience proved. Ott recommended SHIRATORI on this occasion of a decorations list for the Tripartite Pact because he was personally known to Ribbentrop, and had been the Advisor to the Foreign Minister at the time of the conclusion of the Pact, in order to lessen the opposition of Ribbentrop against the whole matter of decorations (324-B). From later developments, Ott did not think that the efforts of SHIRATORI, and particularly the results of such efforts to further Japanese-German relations, deserved the award given to him (324-C).

MATSUOKA had been decorated previously. SAITO, Yoshie, another Advisor to MATSUOKA during the negotiations for the Tripartite Pact, had been recommended and decorated at the same time as SHIRATORI

(324-A. Tr. 34,892
324-B. Tr. 34,893
324-C. Tr. 34,893)

with the Great Cross (324-D).

There is no need to add anything to this testimony of Ott. We only would like to call the attention of the Court to the following facts:

1) That SHIRATORI had been disabled, due to serious illness, for any activities of responsiblity from April, 1941, until about April 1942, as shown in Chapter IX above.

2) That SHIRATORI had no part whatsoever in the planning or waging of the Pacific War, and never occupied a policy-making position prior to or during that time; that is to say, during his entire career (325).

3) That the decoration list proposed in exhibit 1272 comprised persons recommended by Ott, by the Military Attache, and by the Air Attache, and that SHIRATORI was recommended by Ott (326).

Furthermore, witness SAITO testified in this matter to the following effect: SHIRATORI and SAITO received on the same date a German decoration of the same grade, ostensibly in recognition of their service relative to the conclusion of the Tripartite

(324-D. Tr. 34,894.
325. Ex. 3575
326. Tr. 11,353; 11,354 and 11,356)

Fact (Ex. 1272). From his experience during his long career as a diplomat, SAITO knew that the exchange of decorations between governments was, in fact, largely a matter of formality or etiquette, having more to do with the official positions held by the individuals concerned than with their real merit or actual service. It seemed that Ott, in his report to his government, attached undue importance to the position of Foreign Office Advisor (327). Further, Ott gave unwarranted credit to SHIRATORI, as aforesaid.

(327. Tr. 34,964)

(s) Exhibit 3826 (328): This is Ott's telegram to the German Foreign Office, dated 1 November 1938, and reads as follows:

"Japan's attitude towards the European crisis. Prime Minister Prince KONOYE at two meetings during the days of crisis vigorously expressed his high esteem for the German policy but noticeably avoided going deeper into conversations which would fix clearly the Japanese attitude. I have endeavored through the new Ambassador to Rome, Mr. SHIRATORI, who is especially active in favor of the anti-Comintern policy, to influence him in the direction of a stronger expression. His congratulatory telegram to the Fuehrer and Reich's Chancellor, by which act he shook off his proverbial reticence in an unusual manner, may have been based upon such influence."

The prosecution insisted that this document was offered as rebuttal evidence to contradict SHIRATORI's statement on cross-examination (329) that he had no special conversation with Ott prior to leaving for his post in Italy and his specific denial (330)

(328) T. 37,983-84
(329) T. 35,095
(330) T. 35,096

that Ott had used him to influence Prince KONOYE. The prosecution contended further that this document showed the beginning of SHIRATORI's active collaboration with Ott to bring Japan more closely into the Axis camp. (331)

Now, the defense could not question Ott about this document, because it was brought out for the first time in rebuttal, long after Ott's departure for home. However, we can call the attention of the Court to Ott's testimony that he met SHIRATORI for the first time and only once, prior to his departure for Rome, on the occasion of a farewell dinner given by the Italian Ambassador in Tokyo (332). It is very unlikely that such a delicate talk as Ott pretended in exhibit 3826, could have occurred at the first meeting between himself and SHIRATORI, under such circumstances. This exhibit must rather be counted as the first telegram of Ott, in which he used SHIRATORI's name in order to avoid Ribbentrop's distrust and suspicion and to give weight to his report, as he testified in his interrogatory (333). Further, as hereinbefore set forth, SHIRATORI was in the U. S. Army Hospital, having undergone a serious throat operation, during the entire

(331) T. 37,982
(332) T. 34,852; Ott met SHIRATORI the second time after SHIRATORI's return from Rome to Tokyo in the Fall of 1939, T. 34,854
(333) Ex. 3579, T. 34,900-902

time the rebuttal evidence was placed before the Tribunal and was not permitted to see his counsel, nor was he later afforded an opportunity to deny the allegation.

Moreover, SHIRATORI testified, in answer to the cross-questioning of the prosecution, that before his departure for Rome, he discussed the matter of Axis alliance with Prince KONOYE only once; that is to say, when he visited KONOYE around the end of August 1938, to consult him about his appointment to Rome. It may also be pointed out that when KONOYE's message in question is said to have been dispatched, he was concurrently the Foreign Minister, and that, therefore, it ought to have been his subordinates in the Foreign Ministry, from the Vice Minister on down, that advised him in the conduct of Foreign Affairs. Ambassador Designate has no function to discharge before his installation in the office at his post, more especially in matters that have no relation whatever to the country to which he is accredited. We submit from the above that this exhibit shows nothing more than the beginning of Ott's misuse of SHIRATORI's name in the dispatches to Berlin with the purpose of advertising his activities in Tokyo (333).

(333) Ex. 3579, T. 34,900-902

(t) Exhibit 3828 (334): This is Ott's telegram to the German Foreign Office dated 27 January 1941, and contains the following passage:

"At my quite private farewell breakfast which I gave for Ambassador OSHIMA today, he and Ambassador SHIRATORI directed the conversation to the topic of recognition of Wang Ching-wei. Both Ambassadors advocated the view that Japan's request to Germany for recognition of Wang Ching-wei is not advisable at this time in order not to decrease the possibility of a later German influence on Chiang Kai-shek. Both Ambassadors found understanding for this view from the Foreign Minister."

The prosecution insisted that this document was offered in evidence to contradict SHIRATORI's denial on cross-examination (335), that he or OSHIMA advised with either Ott or MATSUOKA on this matter, and to disprove SHIRATORI's statement in his affidavit (336); that his position as Foreign Office Advisor was a sinecure, and his further statement (337) that, as advisor, he was not interested in MATSUOKA's diplomatic moves (338).

(334) T. 37,990
(335) T. 35,122
(336) T. 35,048
(337) T. 35,050
(338) T. 37,989

Now, this exhibit was also brought out in the rebuttal and the defense could have no opportunity to question Ott about it. As witness SAITO testified, SHIRATORI had nothing to do with the recognition by Japan of the Wang Ching-wei regime on 30 November 1940 (339). If we presume the truth of the exhibit 3828, we must conclude that SHIRATORI did not want to block the way to attain peace with Chiang Kai-shek through German mediation. That would be an effectuation of his own diplomacy, as heretofore shown, that is, above all, settle the China mess with Chiang Kai-shek, rather than advice-giving as Advisor to the Foreign Minister or an interest-taking in MATSUOKA's diplomatic moves. However, as SHIRATORI categorically denied the contents of the exhibit, in so far as he was concerned (340), we think that this is also another case in which Ott used SHIRATORI's name in order to add weight to his report.

THE PRESIDENT: We will recess for fifteen minutes.

(Whereupon, at 1045, a recess was taken until 1100, after which the proceedings were resumed as follows:)

(339) T. 34,960-961
(340) T. 35,122

MARSHAL OF THE COURT: The International Military Tribunal for the Far East is now resumed.

THE PRESIDENT: Mr. Caudle.

MR. CAUDLE: If it please the Tribunal, I will resume reading at subsection (u), page 52:

(u) Exhibit 3746 (341): This is Ott's telegram to the Reich Foreign Minister dated 27 May 1939. We have already discussed this matter in Item (i) of Chapter V.

(v) Exhibit 3811 (342): This is a memorandum dated 21 December 1938, signed at Berlin by Wiehl, Chief of the Commercial Bureau of the German Foreign Ministry, offered in evidence by the prosecution in rebuttal, in order to contradict the evidence given by the defendant OSHIMA concerning the negotiation regarding preferential trade treatment to Germany in North China. This exhibit contains the following two passages:

"On the other hand, the newly appointed ambassador to Rome, SHIRATORI, in an interview on 26 October in Tokyo, also spoke of preferential treatment for German technology, industry and trade. (343).

341. T. 37408-410.
342. T. 37899-902.
343. T. 37900.

"The army was for it, also a part of the foreign service, SHIRATORI, for example, were for it; the opposition was to be found principally among domestic economic circles." (344).

Now, at the time of this purported interview on 26 October 1938, Wiehl was in Berlin with SHIRATORI many thousand miles away in Japan. Further, SHIRATORI, as Ambassador elect, could not have had use of the Foreign Office communications system wherewith to transmit any information such as reported in this document. Nor could he use the same facilities for transmission of such information to Ambassador OSHIMA, who was at that time also in Germany. In fact, SHIRATORI had no recourse whatsoever to any of the Foreign Office communication facilities. Consequently, this report comes from a source unknown. The document states it was an interview. Well, an interview with whom, under what circumstances and where? If it were a newspaper interview, I state as counsel for SHIRATORI, we have been unable to locate it, nor do any of his publications, such as have been produced by the prosecution, indicate any such attitude on the part of SHIRATORI. Consequently, this document is certainly not worthy of consideration. It is only a statement by

a man who had never at that time seen SHIRATORI and who does not say where such information comes from, nor have counsel for SHIRATORI, after diligent search, been able to find out. In fact, we do not believe that even Ott, with all his communicating genius, as has hereinbefore been shown, could have sent such a message as this to Germany, although on its face it appears to have a tinge of Ottism.

(w) Exhibit 3503-A. The first telegram (345): This is Ott's telegram to Berlin dated 31 December 1939, tendered by the prosecution in the phase of the defendant OSHIMA, and contains the following passage:

"As the foreign political pressure and serious internal differences continue to exist, neither a coalition cabinet capable of action nor the (complete) affiliation with any of the European power-groups is to be expected for the time being. According to the views of Ambassadors OSHIMA and SHIRATORI, who are working hard for overthrowing the present cabinet, two or three more transit cabinets will be needed in order to bring about a drastic change of the course."

Ott testified in the prosecution's cross-interrogatory that this was a general situation report

which reflected the political pressure in Japan; that the cabinet was inefficient and was being attacked from various sides; that the opposition of OSHIMA and SHIRATORI was not a determining factor; that he did not remember the details of their actions and the basis of his knowledge; and that the change of the cabinet in Japan was a subject of common conversations at the time (346).

Here again Ott used SHIRATORI's name at the end of his long political report to his government. From his above mentioned testimony for the prosecution, as well as from the text of the telegram itself, it can easily be concluded that Ott used SHIRATORI's name here also in order to avoid Ribbentrop's distrust and suspicion, and to give weight to his report. SHIRATORI held at that time nominally the position of ambassador, without any assignment, and, therefore, he had no influence whatsoever.

In conclusion, in the final analysis of the communications forwarded to the German Foreign Office by Ott during his tenure as German Ambassador to Japan, it is glaringly evident from Ott's own admissions and from later developments that practically all such communications were sent in a manner so as to

346, Ex. 3503-B, T. 34373.

be the most convincing to Ribbentrop. We must not forget that much of this so-called "information" Ott forwarded to his Home Office came from sources which Ott himself admits from time to time were without basis of fact or to be erroneous information. Further, we cannot discount the fact of the presence of the Russian spy Sorge in the official household of Ott, who, in order to strengthen his position in the German Embassy for the obtaining of more important information, submitted various so-called "inside dope" to Ott. This "dope" was obtained by Sorge from OZAKI, Hidemi, the confidential secretary of Prince KONOYE, also a communist and Russian spy, working in league with Sorge and who was later court-martialed and executed for these crimes (T. 35052).

Ott, in forwarding these so-called reports, had to give Ribbentrop some assurance as to from where this information came. Inasmuch as Ribbentrop knew SHIRATORI and had instructed Ott to keep in touch with SHIRATORI, he often submitted these reports using SHIRATORI's name to give credence to them. It is to be remembered that Ott had a strong sense of feeling that Ribbentrop mistrusted him and was not satisfied with the reports of Ott because he (Ribbentrop) being a wishful thinker preferred to listen to

other people who forwarded information more to his liking. For this reason, among others, Ott used SHIRATORI's name, where ordinarily it would not have been necessary, to allay the suspicions of Ribbentrop. (347)

We further wish to call attention to the fact that not a single document offered by the prosecution in the way of communications from or to Ott carried any semblance of an oath, and under these circumstances certainly can carry no weight, especially in view of the sworn interrogatories of Ott admitting the falsity thereof, in regard to which the prosecution did not see fit to attack by cross-examining Ott in any manner, as agreed upon, and which was set forth in the first part of this chapter.

347. T. 34,900-902.

XIII. SHIRATORI'S ARTICLES AND LECTURES.

(a) Witness MISHIMA testified about SHIRATORI's activities as a writer and lecturer as follows:

"Having undertaken from time to time the task of putting in order and compiling the writings and lectures of Mr. SHIRATORI, I am well acquainted with the circumstances under which he wrote or made speeches. Such contributions of articles to magazines and delivery of lectures by SHIRATORI were made always only upon the basis of his being urged most earnestly by the people requesting them, and, therefore, I have never seen even one instance where he did so voluntarily. . . Mr. SHIRATORI was not, properly speaking, a writer or lecturer nor was he ever known as such. His writings and lectures, however, seemed to enjoy a certain amount of popularity and were therefore sought after by journalism mainly because he was generally considered as one of the most outspoken and perhaps indiscreet of our bureaucrats and diplomats. After coming home from Sweden in 1936, he held no responsible position in the government at Tokyo, having been placed on the waiting list for several years except for a brief space as Ambassador to Rome. He used to say in those days that he could give utterance to his own thoughts all the more freely, because, although nominally still a diplomat, he was

not admitted into knowledge of state secrets or government policies. In reply to the criticism expressed in some quarters about some of his utterances being too outspoken, Mr. SHIRATORI once told me as follows:

"'In these days of dictators everywhere who do not believe in mincing words, the diplomatic axiom of fortiter in re, suaviter in modo will perhaps have to be reversed. . . Since, however, we do not today want war with any country, it might be permissible or even advisable to indulge in outspoken language every now and then.'" (353).

(b) SHIRATORI testified in his affidavit about his activities as a writer and lecturer as follows:

"In some of my lectures and interviews I tried to show that despite the German-Soviet Non-aggression Pact, the possibility was still there for Japan to enter into agreement with Germany and Italy, together with Soviet Russia this time. Having been relieved of my assignment and placed on the waiting list, I was at liberty to say things which might not necessarily please the government, or which might

353. Ex. 3592, T. 35007-009; and refer also to the ~~language corrections by the LAB on 13 February~~, 1948.

appear to run counter to its policy. For one thing, I had to vindicate myself against censures and criticisms poured forth upon me in some quarters either for what I did or for what I failed to accomplish while in Rome. But my main motive was the same then as before; that is to say, to contribute in my own way toward the speedy termination of the China war. In order to have the Democracies alter their attitude towards Japan, I judged it would be more effective to remind them that Japan's isolation was not nearly so complete as appeared on the surface, than to confess weakness and openly court their sympathy and good will. The advocacy of views like mine by a certain section of the Japanese people could not, in my opinion, have hampered the efforts of the government, but ought, on the contrary, to have helped them along in effect.

"The sudden flaring up of public opinion in Japan in favor of the Axis Powers, which occurred towards the summer of 1940, was solely due to the lightning successes of the German arms in the Western front and was in no way to be attributed to the activities of any individuals or groups in this country. (354).

354. Ex. 3595, T. 35046-47.

"It is true that soon after the conclusion of the Treaty I was asked for an interview by the Tokyo Asahi Shimbun (IPS exhibit 2234) and that I also wrote a few articles on the subject, the original Japanese text of the article cited in IPS exhibit 557-A being one of them, but these represent nothing but my own personal interpretation and argument, not in any way based on official information or inspiration. I am not conscious of ever having put forth any special efforts to unite the nation behind the Axis Pact as the prosecution contends (T. 16919). So unanimous was the acclamation accorded the pact in Japan when it was published that any such efforts would have been quite superfluous." (355).

(c) As already shown in detail in Chapter XII above, German Ambassador Ott testified to the effect that SHIRATORI was not in occupation of any important position and had not any great influence, but that he was very outspoken and talkative. Consequently, the name of SHIRATORI was, for Ott, quite opportune to be made use of as a furnisher of information or opinions, and Ott probably used SHIRATORI's name often in his reports for this reason.

355. Ex. 3595, T. 35050.

(d) The earliest article of SHIRATORI offered in evidence by the prosecution was exhibit 3596-B dated October 1937 (356), and the latest one was exhibit 2233-A, dated June 1942 (357). SHIRATORI, after returning home from Stockholm, was placed on the waiting list of ministers 28 April 1937, was appointed Ambassador to Italy 22 September 1938, departed from Tokyo 22 November, arrived at Rome 29 December 1938, was ordered to return home 2 September 1939, departed from Rome 15 September, arrived at Tokyo 13 October 1939, was placed on the ambassadorial waiting list 9 January 1940, was appointed Advisor to the Foreign Minister 28 August 1940, was released from the same post 22 July 1941, and was elected as a member of Parliament 30 April 1942 (358). As shown in Chapter VIII above, SHIRATORI's advisorship to the Foreign Ministry was a sinecure. Accordingly, if we presume that SHIRATORI's activities as a writer and lecturer began from October 1937; it is quite clear that they were done in course of the period when SHIRATORI had practically no official duties and responsibilities, excepting a brief space of ambassadorship to Italy, during which time he did not engage in such activities.

(356) Tr. 35,101, read only partly by the prosecution.
(357) Tr. 16,012-026. SHIRATORI's articles are: Ex-3596-B, Ex-3596-A; Ex-2234, Parts I-VII; Ex-557; Ex-3599; Ex-3597-A; Ex-3598; and Ex-2233.
(358) Ex. 3575

(c) From the above explanations, the following can be concluded:

1) SHIRATORI was not, properly speaking, a writer or lecturer, nor was he ever known as such.

2) SHIRATORI's writings and lectures seemed to enjoy a peculiar, if not wide popularity, due to his indiscretion.

3) SHIRATORI did his activities as a writer and lecturer only in his private capacity; he never made ex officio any propaganda for the government, nor were private utterances and writings ever sanctioned or condoned by the government.

4) SHIRATORI contributed articles to newspapers and magazines or delivered lectures only after being urged most earnestly by the people requesting it, that is, the publishers of the newspapers and magazines or organizers of the gatherings, etc., which, as we all know, is not an unusual custom or practice in America or Britain; as witness such people as Roosevelt, Churchill, Grew, Morganthau, Byrnes and others, although we are not placing SHIRATORI in such an exalted category as these gentlemen to which the limited circulation of his articles will attest.

5) SHIRATORI thought it might be permissible or even advisable to indulge in outspoken and strong

language every now and then, so long as Japan did not want war. His outspoken or strong words did not mean always strong action but meant in reality peace. SHIRATORI's motto was: "Fortiter in modo, suaviter in re." It must be emphasized also, that there are often cases, in which strict attitude is more effecting than courting, for getting friendship of others.

6) SHIRATORI wrote some of his articles or made some of his lectures partly for the purpose of vindicating himself against censures and criticisms poured forth upon him in some quarters either for what he did or for what he failed to accomplish.

7) The peculia r popularity of SHIRATORI's articles and lectures was mainly based on his outspokenness and indiscretion, and not on his merit as writer and lecturer, which can well be shown by the type and circulation of the journals in which they were published, all of which were published only monthly and had an extremely small circulation for a country of nearly 80,000,000 people.

According to the testimony of the witness MISHIMA (359), who was not cross-examined by the prosecution on this point, the monthly circulations were:

The magazine "Diamond," in the middle of 1940,

(359) Tr. 35,011-12.

about 10,000.

The magazine "Kokumin-Hyoron" (National Review), in 1940; about 1000-1500.

The magazine "Dai-Asia-Shugi" (Greater Asia Magazine), in 1940, about 2000.

The magazine "Gendai" (Today), in the middle of 1942, about 20,000-30,000.

According to the testimony of the witness Miss UNO (360), the monthly circulation of the magazine "Contemporary Japan," the magazine on which the prosecution relied so much that an article published therein was by reference made a part of the Indictment, in 1940-41-42 varried between 1500-2000, and it was strictly an English language magazine and was never published in the Japanese language. She testified further, that from the outset this magazine was not published for domestic distribution, that, therefore, the domestic circulation was very small, and that generally its distribution was directed towards the United States (361).

Further, the witness MISHIMA testified that the number of the audience in public gatherings, at which SHIRATORI delivered lectures, was anywhere from ten some odd persons as constituting a very small

(360) Ex. 3590, Tr. 34,996-97.
(361) Tr. 34,998.

audience, up to some 700 or 800 (362). These are indeed small audiences for a man alleged by the prosecution to be the moulder of Japanese public opinion, especially when considered in the light of other speakers throughout the world who speak to thousands upon thousands on most any given occasion. The allegations and the extent of proof certainly controvert the other.

The above-mentioned magazines were those in which SHIRATORI's articles in IPS exhibits appeared. It must be said from these testimonies that most of the magazines in which SHIRATORI's articles appeared had comparatively small circulation, and that the audience of SHIRATORI's lectures was generally small.

(f) Exhibits 3596-B and 3596-A: The prosecution, with reference to these two exhibits, have placed their own interpretation on the actions and talks of SHIRATORI. A close perusal of both documents will show that these are distortions and completely at variance with the true meaning thereof. The prosecution refers to "chiding" the Japanese people into accepting totalitarianism as the dominant political philosophy of the future, and contends further that SHIRATORI in exhibit 3596-A appeared in the role of an apologist for totalitarianism. It goes further to state he tried to

(362) Tr. 35,012.

justify continued outlawry by ridiculing the democratic idea that a treaty should be considered sacred and inviolable (UU-95, pg. UU-75), which is entirely different from the true meaning of the contents of either of the exhibits. Throughout the presentation of the prosecution's case, they have resorted to quoting short excerpts from articles, communications and other documents which tend to place an unfavorable light upon the defense. Such assertions, when considered in the full context of such articles or documents, show the meaning to be exactly the opposite and the prosecution's contentions fade into nothing. As, for instance, in exhibit 3596-B, the prosecution in its conclusion of the summation against SHIRATORI, state:

"SHIRATORI pronounced a verdict upon himself and his co-conspirators when he said they must plead 'guilty' if they were obliged to explain and justify Japan's expansion actions in the light of the western view of things or within the scope of law and treaty. It is our respectful submission that the Tribunal cannot do better than to accept this version as its own." (UU-97, pg. UU-78).

If taken at its face value, this assertion on the part of the prosecution could mean nothing more than SHIRATORI pleading guilty to the offenses charged in

the Indictment, but if consideration is given to the entire article, it will prove to be entirely different.

This article was written in 1937, long before the Pacific war, and the expression "we" naturally refers to all Japanese, whether they are occupants of the dock or those walking the streets of Tokyo and elsewhere. Although it is not our intention to include, word for word, each article cited by the prosecution, we do think these two particular exhibits have been so distorted that it is well worth the time of the Tribunal to consider the documents on the basis of their true intent. We shall quote not too extensively various other parts thereof, which tend to shed light upon the true meaning of the articles.

In exhibit 3596-B, the very first article he ever contributed to a Japanese journal, he vehemently rebukes not the Japanese people, as the prosecution contend, but the government, for its employment of those threadbare and discredited slogans such as self-defense, wrongs and injustices committed by China, etc., and its failure to give an explanation of the China Affair at once satisfying the conscience of the Japanese people and convincing the outside world at large.

To further show that these expressions were not along the lines as suggested by the prosecution, we wish

to refer to a statement contained in a letter from SHIRATORI to ARITA in the latter part of 1935,, which expressions precede but are in line with the assertions contained in the aforesaid exhibit. In this regard, we respectfully refer the Tribunal to the second half of page 11, Chapter I (General) of this summation, and by reference incorporate the same as part of the answer to the assertions of the prosecution in their summation of the meaning and intent of exhibit 3596-B.

Both in exhibits 3596-B and 3596-A the prosecution contends that SHIRATORI tried to "urge public acceptance of his thesis that totalitarianism was to be the dominant political philosophy of the State," (UU-20, p. UU-18), and that SHIRATORI "found it necessary to chide the people because they had not accepted the internal application of the new age totalitarianism that was being applied externally in Japan's continental policy." (UU-21, p. UU-20.)

This is a misconstruction placed on exhibit 3596-B. The last paragraph of this exhibit shows conclusively that Japan had not taken aggressive action in China, but was only attempting to rehabilitate Asia, at whatever cost to herself, and is appealing to the entire world for a true understanding of Japan's intentions. For the benefit of the Tribunal, we quote said paragraph:

"It is in this light that we view the present China affair. It presents a brave attempt on the part of Japan to rehabilitate Asia at whatever cost to herself. To us Japanese it is human civilization itself that is here at stake. We take it that the whole course of history is now at a turning point. It is from this angle that we request the entire world to regard the present struggle in China."

In both of said exhibits, with respect to urging the acceptance of totalitarianism by the Japanese people, the contents of exhibit 3596-A clearly show that from SHIRATORI's viewpoint, Japan had never known anything but a form of totalitarianism, as set forth in the following excerpt:

"But according to the philosophy of totalitarianism, the whole state or nation is, to carry further the above simile, one large tree of which individuals constitude the branches and leaves. A branch, or a leaf, has its own functions and has, within the whole, its own significance for existence. However, it cannot live apart from the whole, and must always and willingly sacrifice itself if necessary for the sake of the whole. . . Japan has had no other principle than this ever since the beginning of her history, although there have been certain external modifications in the governmental form

under the influence of thoughts imported from abroad. This totalitarian national principle - or national polity, as it is called by the Japanese - is to the Japanese people a thing eternal and immutable."

This quotation simply means that Japan's national polity had, since the foundation of the Empire, been established and maintained upon a permanent and unchanging basis, and that totalitarianism embodied the unity of sovereign and subjects as one organic body which has always been the immutable faith of the Japanese people.

As to the prosecution's contention that SHIRATORI tried to justify continued outlawry by ridiculing the democratic idea that a treaty should be considered sacred and inviolable (UU-95, p. UU-75), we respectfully call the attention of the Tribunal to the last paragraph of page 3 and all of page 4 of exhibit 3596-B, which shows his intention to be somewhat different from that alleged.

Although the prosecution alleges that these articles, etc., were prepared and delivered to mould Japanese public opinion, a careful scrutiny thereof will disclose they were really prepared for outside Western consumption, being strictly negative rather than positive; as witness exhibit 3596-A, which was published in the magazine "Contemporary Japan" which the seventh item of subparagraph (e), Chapter XIII of this summation will

show was published primarily and nearly exclusively for American consumption.

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(g) With reference to exhibit 2234, transcript 16,027-69, which was read only partly by the prosecution and in which language corrections were made on 9 September 1947, transcript 27,925, we wish to call specific attention to the preface to the document, consisting of a number of articles bound together in book form, which sets forth SHIRATORI's contentions as to his writings and lectures, as has been emphasized from time to time throughout this summation. In view of this preface, which is frank and bare upon its face, in the interests of time we do not deem it necessary to discuss the document item by item. This preface appears in the record at page 16,029, and various language corrections were made by the Language Arbitration Board which appear on page 27,925 of the record

These various articles contained in said exhibit 2234, parts I to V, inclusive, only went to point out that despite the German-Soviet Non-Aggression Pact, there still remained the possibility of Japan reaching some agreement with Germany and Italy, together with Russia, at that time, and to impress upon the democracies that Japan's isolation was not nearly so complete as appeared on the surface. It is our contention that SHIRATORI felt that by pointing this fact out to the ~~democracies, they would be made to realize that it would~~

be to the best interests of all concerned to contribute their part to the speedy termination of the China Affair. As stated in the preface, he wanted these articles and lectures to vindicate himself from criticisms which had been uttered against him for his acts of omission and/or commission while in Rome.

With reference to part VI of exhibit 2234, the prosecution's contention is very confusing, in that they allege that in an article published in June, 1939, SHIRATORI cited and praised German victories in a war which had not yet begun. This fact was called to the prosecution's attention by the President of the Tribunal, transcript 16,063, but we fail to find any record of its correction. In the absence of this correction, we submit this article should not be considered.

Other articles mentioned by the prosecution have been referred to and fully explained at various parts of this summation and we do not deem it necessary to discuss them again in this chapter.

(h) In conclusion of this summation relative to SHIRATORI's articles and lectures, we wish to impress upon the Tribunal that every article written or lecture delivered was contributed strictly as an individual expressing his own thoughts in a private capacity. The dates of the articles or lectures will show that they

were written or delivered only at such times as he was on the waiting list or in some similar capacity when he had no access to government information nor any relationship with the government other than to obtain reduced pay until reassigned. The prosecution has utterly failed, in fact have not even tried, to connect any article or lecture with having the auspices, condonement or any relation whatsoever with government propaganda. The only answer the prosecution could make to these assertions was that no difference existed between the responsibility of a person acting in an official capacity and one acting as an individual in a private capacity (UU-18 and UU-85), which construction, if upheld, would lay every newspaper editorial writer in the world open to similar charges and conviction thereof. This certainly is a most desperate and far fetched contention, particularly after they, the prosecution, draw an entirely different conclusion as to official and private liability in their contentions that SHIRATORI did not officially convey to Ciano the instructions of the Japanese Government during the negotiations for the Tripartite Pact of 1939, but did so only in a private capacity (UU-51.) We are made to wonder on just what they intend to rely.

Be that as it may, it is clear that SHIRATORI

never advocated war in his articles and lectures published before the conclusion of the Tripartite Pact of 27 September 1940, and after the conclusion of said Pact, according to Article III thereof, there had always been the possibility that Japan would fight a defensive war for Germany and Italy against the United States and Great Britain and so SHIRATORI warned, in his very limited capacity, of the possibility of war, but he never advocated war.

XIV. CONCLUSION.

The prosecution contended in their summation (UU-97, p. UU-77) that the evidence adduced "leads to the inescapable conclusion that SHIRATORI joined the conspiracy at an early date as a propagandist and apologist for the establishment of a new world order by means of force and aggression," and that "not only did he continue his attempt to influence public opinion throughout the life of the conspiracy but he worked actively both in and out of public office to influence successive governments to take the steps necessary to effectuate the aims of the conspiracy."

To prove these contentions the prosecution has resorted to various forms of so-called "proof" by devious manipulations in order to cast a mirage upon the evidence adduced and proposed by this illusion to convict the defendant SHIRATORI of the charges against him contained in the Indictment. As a perusal of their summation will show, it contains mostly argument, presumption, assumptions and conclusions without satisfactory evidence to substantiate any such contentions. At the outset and throughout the course of the presentation of their evidence against SHIRATORI, they have, time and time again, tried to impress the Tribunal with their arguments relating to SHIRATORI's propagandistic

activities and the so-called tremendous amount of influence and opinions he (SHIRATORI) imposed upon the Japanese public, and by intimation sought to make him a second Goebbels and the chief moulder of Japanese opinion.

As the evidence has shown, SHIRATORI never held but one position that could in the least be called that of a propagandist. This was Chief of the Information Bureau of the Foreign Ministry. As has been pointed out, this position was only that of a bureau chief and carried no policy-making authority or activities whatsoever; that as such he was directly under and subject to the orders and directions of the Foreign Minister of the time, who, as the record has shown, was Baron SHIDEHARA. As has been pointed out in this summation, Baron SHIDEHARA, while testifying as a prosecution witness, stated that SHIRATORI conducted the affairs of his bureau in line and in accord with all directives from him, and co-operated in every respect toward a peaceful solution of the Manchurian Incident.

The prosecution laid great stress upon SHIRATORI's association with the younger officers of the military. It was further pointed out in this regard that the Foreign Office experienced at this time extreme difficulty in determining what was in the minds of those

so-called younger officers, who brought about the Manchurian Incident and were at the time engaged in furthering the same. To this end, as set forth in the record at pages 35,072-73, it was directed that SHIRATORI cultivate these young militarists to gather information for the Foreign Minister; that under the immediate direction of the Foreign Minister he had no alternative in the matter. At no time after being relieved from this position in 1933 did he ever occupy an information position of any nature. The only evidence introduced along this line was various lectures and articles delivered and written by him, which as has been conclusively shown, were delivered and written by him in a strictly private and individual capacity. There has not been one iota of evidence introduced to, in any way, connect SHIRATORI's lectures and articles with having been instigated by the government during his entire public life. The evidence will show that he only did what every free individual under democratic laws has a right to do, that is, express his own mind. As was pointed out in this summation, the dates of the articles introduced as evidence by the prosecution, as compared with the dates of his curriculum vitae will show that never at any time was such a lecture or article delivered, written or published while SHIRATORI occupied

an official position. At all times he was either on a waiting list, awaiting reassignment, or holding a position which only called for payment of salary but entailed no authority or duties whatsoever.

It is interesting to note that in the Nuernberg trial evidence was adduced that one Hans Fritzsche engaged in propaganda activities under Goebbels and Dietrich, Reich Press Chief, by way of the radio and rose, through various promotions, to Head of the Radio Division of the Propaganda Ministry and Plenipotentiary for the Political Organization of the Greater German Radio. It was proven that through his various propaganda activities he broadcast, or caused to be broadcast, various false information and anti-Semitic propaganda to incite the German people against the Jews and performed various other propaganda activities under and by direction of the government and Nazi party, but the verdict concluded that Fritzsche never occupied a position high enough to bring him within the scope of a policy-maker, and though he did at times make strong statements of a propagandistic nature in his broadcasts, the Nuernberg Tribunal was not prepared to hold that they were intended to incite the German people to commit atrocities on conquered people, and he could not have been held to have been a participant in the crimes charged. Further,

that his aim was rather to arouse public sentiment in support of Hitler and the German war effort. And in conclusion the Nuernberg Tribunal found that Fritzsche was not guilty under the Indictment and directed his discharge.

In this instance, Fritzsche had the entire German radio system at his command. The statements and articles of SHIRATORI were so inferior to this man's that they are hardly worthy of mention. There were only fourteen articles in evidence, all of which were published in monthly magazines of extremely low circulation and some were published in a magazine, namely, "Contemporary Japan," which was never meant for Japanese consumption, but was primarily for export to America, while his lectures, as the witness MISHIMA states, were attended by audiences ranging from about 10 people at some to 700 or 800 at others.

Not by the wildest stretch of the imagination, in the use of which the prosecution appears to be very adept, could SHIRATORI be classified with Fritzsche. Yet it was determined that Fritzsche was not guilty.

Further, we have the verdict against Franz von Papen, who was tried with Fritzsche at Nuernberg. In its verdict, the Nuernberg Tribunal lists manipulations of devious and underhanded character carried on in Austria

and Turkey by von Papen on behalf of the Nazi party while he served as German Ambassador in both countries. They show how he tried to undermine the Schuschnigg government and how he advised Hitler what action to take in bringing about anchluss in Austria. Also, he arranged a meeting between Hitler and Schuschnigg in Berchtesgaden on February 12, 1938, and at its conclusion advised Schuschnigg to comply with Hitler's demands which amounted to surrendering Austria to Nazi Germany. However, in its conclusion, the Nuernberg Tribunal found von Papen not guilty. Again we find that not by any stretch of the imagination could the activities of SHIRATORI be classified as even remotely comparable to those of von Papen, and if the decision at Nuernberg is in any manner a criterion on international law governing the issues here involved, SHIRATORI is certainly not guilty of the charges relating to propaganda.

As the prosecution contended, SHIRATORI's only acts of alleged policy-making were when he failed or refused to carry out the dictates of the ITO Mission. As we have shown, he never had an opportunity to carry out such directives as the Tripartite Pact of 1938-1939 was never concluded. Further, there was no proof of a refusal but only that he gave his government the benefit of such information as he had been able to obtain or

acquire on the ground. It must be remembered that the only ambassadorial post in the entire governmental career of SHIRATORI was the ambassadorship to Rome, in which he was actively engaged for a period of a few days over eight months, which duties resulted in exactly nothing. As to the Tripartite Pact of 1940, it has been shown by both the prosecution and the defense witnesses that SHIRATORI had no part whatsoever in the negotiations or conclusion of the same, never having attended even one meeting as Foreign Advisor in regard thereto.

As to the Pacific War, it has been conclusively shown that SHIRATORI did not and could not have had any part whatsoever in its planning or waging.

Finally, it is desirable to call the Tribunal's attention to the fact that in no instance has any testimony of a sworn nature been introduced against SHIRATORI, there being not one sworn statement introduced nor one live witness produced to testify against him. The great majority of the evidence against him was the so-called communications between Ambassador Ott and the German Government, together with several extracts from HARADA's Memoirs. However, Ott in his sworn interrogatory gave the background of these statements and swore to the falsity of some, stating that others were ~~based on rumors which were never verified and painted a~~

clear picture of why and under what circumstances such communications were sent. As to HARADA's Memoirs, all information contained therein was hearsay and necessarily unreliable. Further, it has been shown that the circumstances and surrounding conditions relating to the mental and physical condition of HARADA and the manner in which the memoirs were written were such as to make them altogether of no factual value. We, therefore, wish to reaffirm that not only has the prosecution failed beyond a reasonable doubt to prove the guilt of SHIRATORI on any of the Counts charged against him in the Indictment, but on the other hand, SHIRATORI has produced evidence to controvert the prosecution's evidence to the extent that he has, beyond a reasonable doubt, shown and proven to this Tribunal that he was not guilty.

Wherefore, the accused SHIRATORI, through counsel, prays that a verdict of Not Guilty be entered in this matter as pertains to all Counts in the Indictment with which he is charged, and that an order be issued releasing him from custody.

THE PRESIDENT: Major Furness.

MR. FURNESS: May it please the Tribunal:

1. I will commence this summation by referring briefly to the prosecution's summation on the general conspiracy Count, Count I of the Indictment,[1] which

(1. Prosecution summation D to H.)

outlines not only its general proof on that Count but also its general proof on all crimes against peace.[1] In this outline of general proof, totalling 631 paragraphs, his name is mentioned in only seven: Paragraphs G-53, 54, and 56, and H-101, 103, 107, and 199.

2. The first three relate to diplomatic conversations between the defendant as Ambassador to the United Kingdom and Prime Minister Churchill and Foreign Secretary Eden during February, 1941. The next three, H-101, 103, and 107, refer to his diplomatic conversations as Ambassador with Litvinov, People's Commissar for Foreign Affairs of the Soviet Union, in the summer of 1938 during the Changkufeng (Lake Khassan) Incident. In H-199 the Soviet prosecution sums up against him, charging him with contributing to initiation of undeclared war at Lake Khassan and various other activities not mentioned in any of the preceding paragraphs of its summation.

3. I submit that, on its own outline of general proof which refers to him only in six paragraphs, the seventh being undocumented and bare assertion, all relating to purely diplomatic activities as Ambassador, this defendant should be found not guilty on all Counts

(1. Prosecution summation I.)

charging crimes against peace.[1] It is significant that although charged with planning and waging all wars which commenced on 7 December 1941, he is not charged with initiating any of them, nor for conspiracies to murder or murders upon the initiation of such wars.

4. In addition to crimes against peace, he is charged with murder at three Chinese cities,[2] but these Counts have apparently been dropped since the prosecution does not refer to them in its individual summation against him, and there is certainly nothing resembling proof. He is also charged with murder in the region of Lake Khassan in July and August, 1938.[3] I submit that no murder was committed there. The prosecution alleges that this was a war; it is their allegation, and they stand or fall by it, and I submit killings in a war, aggressive or not, are never murder; certainly not by an Ambassador, acting under instructions of his Government,[4] half way across the world from the scene of the fighting and from the seat of his

(1. Counts 1-18, 23, 25, 27-35. See also prosecution summation K-4: "No diplomat has been charged in any instance because he carried out the instructions of the Foreign Ministry. . . .The reason for non-inclusion of such ambassadors is that the ordinary character of an ambassador as conduit transmitting messages and information between his own nation and the nation to which he has been accredited has been recognized.

2. Counts 48-50.

3. Count 52.)

4. See prosecution summation K-4 quoted footnote 1, par. 3, this summation

Government where decisions, if any, were made and who neither commanded nor controlled any troops which engaged in the fighting.

5. The defendant is also charged under Counts 54 and 55 for the commission of war crimes and crimes against humanity. Counts 44 and 53, the conspiracy Counts, have been dropped by the prosecution. Under Count 54, it is charged that he "ordered, authorized, and permitted the same persons as mentioned in Count 53 to commit the offenses therein mentioned and thereby violated the laws of war." If we examine Count 53, we find that the persons he is charged with "ordering, authorizing and permitting" were "Commanders-in-Chief of the several Japanese naval and military forces....officials of the Japanese War Ministry and persons in charge of camps and labor units for prisoners of war and civilian internees, and the military and civil police of Japan, and their respective subordinates," and that he is alleged to have "ordered, authorized or permitted" them "frequently and habitually to commit breaches of the Laws and Customs of War" against the armed forces and prisoners of war and civilians of the Allies in the power of Japan. I submit that the phrase "that the Government of Japan should abstain from taking adequate steps in accordance with said Conventions and assurances and Laws and Customs of War, in order to secure observance and prevent breaches thereof" defines only one of the objects of the

alleged conspiracy, and, since the conspiracy charge has been dropped, is not carried over into Count 54. Obviously, too, the context of the latter Count charging commission of offenses does not include it.

6. Therefore under Count 54 he is charged individually with command responsibility. I submit that he had none. He had, as a civilian Foreign Minister, no power of command over Commanders of the armed forces of Japan, the officials of the War Ministry, or the camp commanders or the police; no power to command under which he could order, authorize or permit. He was Foreign Minister and all the persons he is charged with ordering, authorizing and permitting were under the Army and Navy General Staffs, or the War, Navy and Home Ministries.

7. Count 55, I submit, charges no crime under the Charter. It charges that the defendant with others "being by virtue of their respective offices responsible for the observance of the Laws and Customs of War in respect of the armed forces" of the Allies and many thousands of prisoners of war and civilians then in the power of Japan..."deliberately and recklessly disregarded their duty to take adequate steps to secure the observance and prevent breaches thereof and thereby violated the laws of war." Since

the conspiracy counts have been dropped a substantive charge must be proved. This requires proof beyond all reasonable doubt of direct individual responsibility for acts or omissions resulting in commision of crimes. I submit that this charges only neglect of duty, not any crime under the Charter nor under international law, the clause "thereby violated the laws of war" being a bare affirmation referring back to the preceding part of the Count which charges only neglect of duty. It does not charge that atrocities were committed nor that this defendant had control over persons who committed them. Under Article 5 of the Charter, conventional war crimes are defined merely as "Violations of the laws of war." So we must look to international law to find out what these crimes are and I submit that nowhere in international law is neglect of duty, unless coupled with control over those who actually committed atrocities, a war crime. The YAMASHITA case[1] extended the liability for command responsibility to an unprecedented degree. But there the charge was that YAMASHITA "While commander of armed forces... unlawfully disregarded and failed to discharge his duty as Commander to control the operations of the members of his command, permitting them to commit

1. In re YAMASHITA, 327, U.S.I.

brutal atrocities and other high crimes..., and he thereby violated the laws of war." In that charge are found three essential elements in addition to an allegation of neglect of duty; (1) that he commanded the forces, (2) that he failed to control those forces, (3) permitting those forces to commit war crimes. None of those elements appears in this charge. The same reasoning also applies if the charge covers, in addition to war crimes, crimes against humanity since those have some definition in the Charter Article 5 C. They are there said to include "murder, exterminatio enslavement, deportation and other inhumane acts, etc." Nowhere in this definition and nowhere else in the Charter is mere neglect of duty defined as a crime.

8. But regardless of whether this Count alleges a crime under the Charter or under international law or not, we submit that no deliberate or reckless disregard of duty has been proved, much less any deliberate and reckless disregard which must be proved beyond reasonable doubt in order to convict; rather that the evidence shows that this defendant performed his duty and in fact went beyond it in an effort to obtain better treatment of prisoners of war.

CHINA

9. The defendant SHIGEMITSU was first assigned

to service in China on 27 January 1925 as First Secretary of Legation, serving there until 28 December 1927. He returned as Consul General on 20 February 1929, becoming also Councillor of Embassy on 24 April 1929.[1] He took a prominent part in settling the Tsinan and Nanking Incidents of 1927, 1928 and 1929.[2] He was appointed Minister to China prior to the Mukden Incident on recommendation of Baron SHIDEHARA in order to carry out the latter's policy.[3] The SHIDEHARA policy was described in the Lytton Report as "conciliatory and peaceful", "good will and neighborliness",[4] and by its author on the witness stand as one of "friendship" and non-interference in Chinese affairs.[5] This was the policy of the WAKATSUKI Cabinet, SHIGEMITSU made every effort to carry it out[6] and Baron SHIDEHARA was completely satisfied.[7] The policy of the Legation under SHIGEMITSU was to avoid cause for incidents, to settle them by negotiation[8] and peaceful means.

1. Ex. 123, T. 775
2. T. 3040 to 3042
3. T. 1363
4. Ex. 57, T. 1764
5. T. 1362
6. T. 1587
7. T. 1363
8. T. 3042

10. Prior to the Mukden Incident, anti-Japanese sentiment in the Three Eastern Provinces of China comprising Manchuria was strong.[1] In order that they might investigate this situation which Minister SHIGEMITSU feared might cause Sino-Japanese relations to deteriorate, he arranged for T. V. Soong, the President of the Executive Yuan, to make a trip to Dairen and Mukden so that he might exchange opinions with Count UCHIDA, the President of the South Manchuria Railroad, and Chang Hsueh-liang, the Young Marshal. SHIGEMITSU planned to go north also and lend assistance.[2] The purpose was to settle as many of the easier questions as possible, then take up the more fundamental ones,[3] and thereby reduce tension.[4] These plans were made during August and September 1931, before the Mukden Incident, and not on account of it in April-May 1932, as argued by the prosecution in its summation.[5] They were efforts to solve the difficulties which were the fundamental cause of the outbreak of hostilities.

1. T. 3039
2. Ex. 3536, T. 34,470, 34,471
3. Ex. 3537, T. 34,472
4. Ex. 3538, T. 34,475
5. S.S.-36

11. Before the trip could be made the Incident occurred, but the motives of both men was clear; to relieve the tension, to prevent its breaking out in forceful action. The men with whom he worked were men of power and influence, T. V. Soong, then and now, one of the great men of China, Count UCHIDA who, as President of the South Manchuria Railroad, was the most prominent Japanese civilian in Manchuria, and the Young Marshal, dictator of Manchuria. He would not have enlisted their help unless he had wanted to accomplish a peaceful settlement.

12. Even after hostilities commenced on the night of the 18th the efforts of T. V. Soong and SHIGEMITSU did not come to an end. On the morning of the 19th, SHIGEMITSU conferred with Soong. It was proposed that a powerful joint commission be appointed to prevent the Incident from expanding, to settle it, to mitigate its disastrous effects on the relations between Japan and China.[1] SHIGEMITSU that day forwarded the proposal to Baron SHIDEHARA,[2] recommending quick acceptance and urgently awaited approval by return telegram.[3] The answer came from SHIDEHARA on the 21st, making the further proposal that the objective of the

1. Ex. 246, T. 3050
2. Ex. 246, T. 3052
3. Ex. 246, T. 3054, 3055

joint commission be not only the settlement of the incident, but also agreement on basic principles in order that similar incidents might not recur.[1] But due to the rapid spread of hostilities the Chinese Government decided to appeal to the League of Nations and rejected the proposal.[2]

THE PRESIDENT: We will adjourn until half-past one.

(Whereupon, at 1200, a recess was taken.)

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1. Ex. 246, D.D. No. 5- not read
2. Ex. 246, T. 34,480, 34,481

AFTERNOON SESSION

The Tribunal met, pursuant to recess, at 1330.

MARSHAL OF THE COURT: The International Military Tribunal for the Far East is now resumed.

THE PRESIDENT: With the Tribunal's permission the accused TOGO will be absent from the courtroom the whole of the afternoon session conferring with his counsel.

Major Furness.

MR. FURNESS: I resume the summation on behalf of the defendant SHIGEMITSU, thirteenth paragraph.

13. On 23 September, five days after the fighting began, SHIGEMITSU sent a telegram to Foreign Minister SHIDEHARA,[1] deploring the incident. He said:

"The recent action of the military was based on their conception of the Emperor's prerogative of supreme Command and was taken, entirely ignoring the government. Deep is my feeling to see that whatever achievements in external affairs resultant of our untiring efforts have been all of a sudden reduced to nothing. I am profoundly distressed to think of the future of the nation."[2]

1. Ex. 246, Tr. 34477. 2. Tr. 34477.

He went on: "In any case, no Chinese authorities will appear hereafter which will be able to conclude any reasonable agreement with Japan on the Manchurian question or to begin negotiations for that purpose. Consequently, we shall have to be prepared to see Japan and China in fact deprived of diplomatic relations for a long time as a result of the present incident which also will have to remain exposed to censure of world public opinion. . ."[1].

He did more than deplore, he warned: "In this situation it is most earnestly desired that arbitrary action of the military should be interdicted so as to make the word of the state emanate solely through the channel of the government, that irresponsible and disadvantageous propaganda of the military circles should be stopped, and that, making its stand clear, the government should re-establish political leadership. . ."[2].

Again, and this is significant since he has been accused particularly by the Soviet Union, he warned: "Should our troops by any chance advance into North Manchuria, a clash with Russia would immediately be surmized and that will make the situation even

1. Tr. 34479, 34480. 2. Tr. 34477.

more serious."[1.]

Finally, he warned against anything which might cause further incidents outside Manchuria, in Shanghai, for example, where fighting started four months later and the Japanese naval forces were first involved: "As the matter stands today there is no foretelling that unpropitious incidents will not happen outside Manchuria. (In this regard I request the Government to call full attention of our Navy in no case whatever to move recklessly.)"[2.]

14. At the time of the first Shanghai Incident, SHIGEMITSU was still Minister to China. He was not Consul General.[3.] Consuls Generals are not, as prosecution alleges, subordinates of Ministers.[4.] The Tribunal will remember the many telegrams from HAYASHI, Consul General at Mukden, and other consuls in China, reporting direct to Baron SHIDEHARA during 1931 and 1932, which were introduced into evidence. No demands were delivered by him and he was, in fact, not in Shanghai, when the demands were delivered on 20 January 1932, nor when fighting broke out on 29 January 1932, but in Japan. KIDO's diary entry of

1. Tr. 34479.
2. Tr. 34479.
3. Tr. 3799.
4. Tr. 3042.

21 January 1932 shows that after a lecture by SHIGEMITSU in the Emperor's presence, the Emperor asked SHIGEMITSU: "Then is it not possible for the time being to hope for an intimate friendship with China?" The Minister answered that as long as the Manchurian problem exists he felt it was difficult to enjoy good friendship.[1.]

15. He did not return to Shanghai until the 30th or 31st of January.[2.] Upon his return he expressed his dissatisfaction at the outbreak of hostilities and thereafter did his utmost to limit and terminate hostilities as soon as possible. Even before formal conferences under the procedure proposed by the League of Nations started, he had informal meetings with the British and American Ministers who, at his request, got in touch with the Chinese general during the height of hostilities and arranged a temporary truce in order that Chinese noncombatants might evacuate Chapei, thus saving the civilian population from the full effect of the fighting. During the course of the fighting, he persuaded the officers in command of the Japanese forces to limit the fighting to Shanghai and the adjacent area and not to advance further into China,[3.]

1. Ex. 3340, Tr. 30754.
2. Ex. 3540, Tr. 34487.
3. Ex. 3540, Tr. 34488.

and in fact, the Japanese forces did not advance further than the environs of Shanghai.[1.] By March 15, Japanese forces had started to withdraw,[2.] and by March 20 were not far above the number normally stationed in Shanghai.[3.] On March 24, Sino-Japanese conferences on the cessation of hostilities began and the Truce Agreement was signed on May 5, 1932. On April 29, five days before it was signed, SHIGEMITSU was gravely injured in a bomb outrage.[5.] That night, though gravely wounded, with his leg half torn off, SHIGEMITSU ordered his staff to send a telegram to the Foreign Minister, stating that owing to his wounds he would be unable to attend to his daily business, but that he strongly urged the conclusion of the agreement be not hindered or delayed because of the bomb incident, since the conclusion of the truce agreement was, from the viewpoint of national policy, of the utmost importance.[6.] The agreement formally terminating hostilities was signed by representatives of the United Kingdom, the United States, France and Italy, as well as representatives of China

1. Tr. 3260, Tr. 3795.
2. Tr. 3796.
3. Ex. 57, p. 86.
4. Ex. 57, p. 86.
5. Ex. 3540, Tr. 34488, Tr. 3264, 3265.
6. Ex. 3540, Tr. 34489.

and Japan,[1] by Mr. SHIGEMITSU about an hour before his leg was amputated.[2] The attitude of the Minister throughout this was one of seeking peace, not aggression. In proof of this I cite the evidence of the witness J. B. Powell, certainly a man who had no incentive for thinking well of things Japanese, who testified on direct examination: "Incidentally, I see Mr. SHIGEMITSU sitting here among the accused. He worked very strenuously to get the thing settled."[3]

On cross-examination he testified: "SHIGEMITSU as a civilian was doing everything he could to bring about an adjustment of the situation there. That is, no one, I don't think, would class him as an aggressive figure in these activities such as the military were."[4]

16. The prosecution in its summation[5] would have us believe that he dictated those telegrams and signed the Truce Agreement under pressure of foreign countries, there on what might have been his death-bed, at the least, permanently and most painfully crippled. Such a statement would be absurd if it were not malicious. We have the testimony of the representatives

1. Ex. 2419, Tr. 19574.
2. Ex. 3540, Tr. 34489.
3. Tr. 3252.
4. Tr. 3262.
5. SS-4.

of two of those "foreign countries" who signed with him. Sir Miles Lampson, now Lord Killearn, who represented Great Britain, testified: "On the Japanese side Mr. SHIGEMITSU from the outset cooperated wholeheartedly, and much of the credit for reaching an agreement was due to his persistent efforts and patient cooperation. When agreement had been signed, he was unfortunately seriously wounded in a terrorist outrage. Despite the fact that he was in severe pain, he refused to allow his injuries to hold up the signature of the agreement, which was accordingly taken him in hospital, where he signed it."[1].

Nelson Trusler Johnson, the Minister from the United States, testified:

"From the time when hostilities between Japan and China broke out at Shanghai, China in January 1932, to the signing of the truce that ended those hostilities on May 5, 1932, Mr. SHIGEMITSU devoted all his time and energy first to finding means to bringing his own countrymen and the Chinese to discussions aimed at ending the strife, and latterly with me, British Minister Sir Miles Lampson, now Lord Killearn, M. Wilden, the French Minister, and

1. Ex. 3543, Tr. 34494.

Count Ciano, the Italian Minister, to bring these discussions to a successful conclusion of the Truce Agreement of May 5, 1932. That agreement had to be taken to the bedside of Mamoru SHIGEMITSU at the hospital, where he lay seriously wounded by an assassin's bomb, thrown onto the speakers' platform where he and other Japanese speakers were standing on April 29. Throughout this difficult time Mr. SHIGEMITSU spared no efforts to localize the incident, and contributed decisively to the creation of an atmosphere of friendliness making possible a truce and the withdrawal of the considerable Japanese military forces landed around Shanghai."[1.]

17. The prosecution argues that the award to the accused of the Order of Merit with the Order of the Double Rays of the Rising Sun shows his connection with expansion in China.[2.] This award was made on 29 April 1934[3.] and according to his personal record was in recognition of services in the 1931-1934 affairs. Therefore, the award might have been for any services during that period, including his services in bringing to an end the hostilities at Shanghai. So many awards were made of the same type

1. Ex. 3544, Tr. 34496.
2. SS-3.
3. Ex. 123, Tr. 776.

that it is apparent that they were made to almost all persons holding office during that period. Awards for such services were made to 452,826 persons, of whom 158,593 received the same orders as those made to the accused.[1.] Among those receiving awards for such services were Baron WAKATSUKI, former Premier,[2.] Baron SHIDEHARA, former Foreign Minister,[3.] and MORISHIMA, Morito, Consul at Mukden,[4.] all of whom testified for the prosecution regarding their efforts to avoid and, after hostilities began, to limit the expansion of the Mukden Incident. Another who received such an award was HAYASHI Kyujiro, who, as Consul General at Mukden, sent many telegrams to Baron SHIDEHARA showing his efforts along these same lines.[5.]

18. In the prosecution's summation it is alleged that the accused was a member of the Board of Manchurian Affairs[6.] and that this shows that he was connected with further development of Japanese expansion in Manchuria and with the transformation of Manchukuo into a military base for an attack against

1. Ex. 3147, Tr. 28028, 28029.
2. Tr. 1553.
3. Tr. 1318.
4. Tr. 3006.
5. Examples: Ex. 181, Tr. 2178; Ex. 181, Part 1, Tr. 2179; Ex. 181, Part 2, Tr. 2183.
6. ~~SS-2.~~

the Soviet Union.[1] His personal record shows that he was appointed Councillor of the Board of Manchurian Affairs on January 18, 1935,[2] not that he was appointed a member of that Board. From the ordinance establishing that Board[3] it is apparent that the duties of that Board were purely administrative.[4] The power of Japan in Manchukuo was the power of the Kwantung Army, not of any civilian board.[5] No proof has been submitted regarding the powers of a Councillor nor of any policy advocated or furthered by the accused. It is submitted that this merely shows that he held office in the Government during this period.

19. The attitude of the accused SHIGEMITSU towards China did not change. While he was Ambassador to the Soviet Union he spoke to his United States colleague, Joseph E. Davies, of his desire to compose peace in China and to end a war he deplored and thought ill-advised.[6] And after becoming Ambassador in London he expressed the same attitude in conversations with H. A. Grynne, editor of the Morning Post,[7]

1. SS-3.
2. Ex. 123, Tr. 776.
3. Ex. 451.
4. Ex. 451, Tr. 5113.
5. Ex. 241, Tr. 2979, Ex. 241, P. 5 (II)C, not read.
6. Ex. 3546, Tr. 34508.
7. Ex. 3552, Tr. 34536.

and with the American Ambassador Joseph E. Kennedy.[1] In a telegram to Foreign Minister ARITA in May 1940 he recommended conciliation between the Wang Ching-wei and Chiang Kai-shek governments and the Chiang government and Japan regardless of conditions.[2] In August 1940, in a telegram to Foreign Minister MATSUOKA, he said, "I believe to show a liberal-minded attitude towards settling the China problem expresses not weakness but strength on our part."[3]

20. On 19 December 1941 the accused was appointed Japanese Ambassador to the National Government of China at Nanking.[4] On 11 April 1942 in a conference with Marquis KIDO he outlined the necessity for radical reorientation of Japan's policy towards China, emphasized that China's independence and sovereignty should be fully recognized, that China should be returned to the Chinese, and that the two countries should work on a cooperative rather than punitive basis,[5] in other words, what came to be known as the New China Policy. On 9 January 1943 he signed as Japanese Ambassador a treaty with the Nanking Government, providing for the return

1. Ex. 3551, Tr. 34532.
2. Ex. 1017, Tr. 9685.
3. Ex. 1023, Tr. 9715.
4. Ex. 123, Tr. 777.
5. Ex. 3340, Tr. 31061.

of the international settlements to the jurisdiction of China and the abolition of extraterritorial jurisdiction.[1]

1. Ex. 2610, Tr. 22387-22389.

21. In its summation[1] the prosecution has made the statement, completely unwarranted by any evidence, that the functions of the Japanese Ambassador to the Nanking Government went far beyond the scope of ordinary diplomatic representation, and alleged that, since the Japanese Ambassador to Manchukuo was Commander-in-Chief of the Kwantung Army, he was actually dictator of Manchukuo, and "that the full subordination of the local administration to the Japanese emissaries was still more expressed in this case."[2] They cite no proof, and there is no evidence to support this. The power of the person occupying the concurrent posts of Ambassador to Manchukuo and Commander-in-Chief of the Kwantung Army was due to his commanding that army. In the case of the National Government at Nanking, the Ambassador commanded no armies. He was simply the Ambassador.

22. I submit that there is no evidence against this defendant on the counts involving China, counts 2, 3, 6, 18, 27, 28, 48, 49, and 50.

THE SOVIET UNION

23. I have already referred to the warning by the accused in his telegram to Foreign Minister

1. SS-17
2. SS-17

SHIDEHARA sent five days after the hostilities at Mukden broke out, that if they should spread into North Manchuria, he feared a clash with Russia.[1] The witness MORISHIMA testified that the policy of the accused as Minister to China was to try to prevent hostilities which started with the Mukden Incident spreading into North Manchuria, since, if that happened, it would adversely affect Russo-Japanese relations.[2]

24. He did not approve of the negotiations with Germany for a Tripartite Pact to strengthen the Anti-Comintern Pact in 1939, which later proved abortive.[3]

25. On 27 August 1936 he was appointed Ambassador to the Soviet Union.[4] His American colleague, Joseph E. Davies, testified to SHIGEMITSU's successful efforts with Litvinov to prevent the border incident along the Amur River from breaking into war between Japan and Russia.[5]

26. He conducted the negotiations with Litvinov during the summer of 1938, which were first aimed at preventing hostilities breaking out along the border near Lake Khassan, and after they did break out, were

1. Ex. 246, tr. 34,479
2. Tr. 3057
3. Tr. 33,798-9, 34,066
4. Ex. 123, tr. 776
5. Ex. 3546, tr. 34,508, 34,509

successful in terminating them. Throughout he acted under the instructions of his government. This is evident, not only from the testimony of the Foreign Minister, General UGAKI,[1] and from the contemporary confidential reports of the Japanese Foreign Office,[2] but also from the records of the conversations between SHIGEMITSU and Litvinov in the latter's official diary.[3] In view of the use made by the prosecution of General UGAKI as a witness, the prosecution cannot well maintain that General UGAKI is a party to any conspiracy, particularly in this instance, where it has introduced evidence in rebuttal showing that he was instrumental in trying to prevent the incident from breaking into open hostilities.[4]

27. The prosecution says that the defense failed to produce these instructions. The defense could not produce the actual instructions because the section in which such records were kept was burned to the ground during the Allied bombing of Tokyo,[5] and all records in Moscow were destroyed at the beginning of the war between the Soviet Union and Japan.[6] The witness HAYASHI, Chief of the Archives Section

1. Ex. 2715, tr. 23,868 to 23,872
2. Ex. 2647-A, tr. 22,922 to 22,942
3. Ex. 2633, tr. 22,804; ex. 2635, tr. 22,826; ex. 2638, tr. 22,852; ex. 2716-A, tr. 23,906; ex. 2716-B, tr. 23,907; ex. 27160, tr.23,908;
4. Ex. 2793-A, tr. 37,756
5. Ex. 2630, tr. 22,760
6. Ex. 2637, tr. 22,845-22,846

of the Foreign Office, testified[1] that he had made a thorough search for such telegrams and communications, could find none, that the records of the Foreign Office showed that the files relating to this incident had been destroyed by fire. After cross-examination this witness was stood down until he produced the Foreign Office records for the inspection of the prosecution.[2] That he did this I think the prosecution will not deny. The fact that the prosecution at no time asked that he be recalled to the witness stand must indicate that they do not question his testimony accounting for the non-production of such documents.

28. On 11 July 1938 Soviet troops appeared on Chang-ku-feng Hill, and advancing on to the side facing Manchukuo, began to dig trenches. On the 14th instructions were telegraphed to the Japanese Charge d'Affaires in Moscow to protest and demand withdrawal, which instructions he carried out. The Ambassador at that time was away on a trip, but acting on orders of his Government, urgent because of the gravity of the situation, he returned to Moscow on the 18th.[3] On the 20th he interviewed Litvinov. SHIGEMITSU, at the beginning of the interview, said: "I have an urgent

1. Ex. 2631, tr. 22,780-22,781
2. Tr. 22,792, 22,794, 22,796, 22,798, 22,800
3. Ex. 2647-A, tr. 22,927

instruction from my Government."[1] He then stated that on July 11 Soviet troops had unexpectedly occupied the Chang-ku-feng district west of Lake Changchi (Khassan), and had begun to fortify it.[2] He continued: "On having studied the question again, the Imperial Government wired me and instructed to state the following,"[3] that according to the data at the disposal of the Manchukuoan Government, the region belonged to Manchukuo, that the west coast of the lake was the border, and "that the Japanese army in virtue of its obligations to Manchukuo might take measures ensuing from these obligations."[4] Pursuant to these instructions, he demanded that the Soviet withdraw its troops so as to restore the status quo which had existed until July 11. He was, therefore, as Ambassador, conveying the message of his Government, acting on the assumption that the postulate supplied by his Government was correct, that is, that Manchukuoan territory had been invaded by armed troops who were building fortifications, that Japan had obligations to Manchukuo which it must fulfil, and that demand should be made that such troops withdraw beyond the border. He did not say that the border must

1. Ex. 2633, not read
2. Ex. 2633, tr. 22,804
3. Ex. 2633, tr. 22,804

be accurately demarcated at that time on the basis of the data of Manchukuo alone, but instead that such determination might be made after tranquility had been restored on the border on the basis of data which each side had at its disposal.[1] Later in the interview he said, according to Litvinov's diary: "Therefore Japan has the right and obligations to Manchukuo to use force in order to make the Soviet troops evacuate from the territory of Manchukuo unlawfully occupied by them.[2] I submit that this was merely a statement of Japan's obligations; further, that it followed naturally the instructions which he had received from his Government to say: "The territory belongs to Manchukuo and the Japanese Army might take measures ensuing from these obligations."[3] In the course of the interview, SHIGEMITSU pointed out that both the Russian and Chinese texts of the Hunchun Border Protocol indicated that the west coast of the lake was the border.[4] As to the map which Litvinov produced, SHIGEMITSU replied that he could not tell whether it was false or authentic, he had never seen it before, it had never been published, it did not correspond with the text of the Hunchun

1. Ex. 2633, tr. 22,807
2. Ex. 2633, tr. 22,816, 22,817
3. Ex. 2633, tr. 22,805
4. Ex. 2633, tr. 22,810

Border Protocol, and that when the time came to demarcate the border, all maps should be considered.[1] Litvinov said that he did not know whether the map had been published or not.[2] General UGAKI testified that he did not think that the map had been published.[3] The basis for the Japanese-Manchukuoan claim that the border ran along the west shore of the lake has been outlined in the General Summation on the Russian Phase[4] and will not be repeated here. But there is no reason to doubt that the demand made by SHIGEMITSU was made in good faith, that it was based on the information which he had received from his Government, that he had no reason to disbelieve it, that it was based on the Japanese contention regarding the border, and that he was, as Ambassador, following the instructions of his Government.[5] We contend that the contention of his Government was correct, but whether it was or not was not for him to judge. He was in Moscow, not at Changku-feng. He necessarily had to depend on the information given him by his Government and to follow its instruction. No Government could operate if its Am-

1. Ex. 2633, tr. 22,816
2. Ex. 2633, tr. 22,812
3. Tr. 23,903
4. Defense summation H-12
5. See pros. summation K-4 quoted, footnote 1, para. 3 this summation.

bassador was held responsible for the truth of the information supplied him by his Government or the correctness of its contention or if he assumed to judge either.

29. The spirit behind his statements was clear: Withdraw troops, which are the potential cause of fighting, and then settle the border after tranquility had been restored. Litvinov throughout the interview claimed that the hill, not just the western slope, was the territory of Soviet Russia, and rejected the demand.[1]

1. Ex. 754, tr. 7,762; ex. 2638, tr. 22,859-60

30. The Government at Tokyo decided to take an entirely defensive position.[1] Troops which had taken up this position were in fact withdrawn on the 28th of July.[2]

31. How fighting broke out has been outlined in the General Summation.[3] There is no evidence that it was ordered or caused by any action of this defendant. He commanded no troops. He was not in a position to authorize to give anyone orders. There is no evidence that it was caused by him, nor that any message from him had anything to do with the commencement of hostilities. There is no evidence that it was permitted by him. He had no authority to command or control, under which he could permit. It cannot be argued that any war was initiated by him. Wars are not initiated by two diplomats, each representing his country's claims, conferring ten days prior to any fighting and far from the scene of hostilities, and in SHIGEMITSU's case, far from Tokyo, the seat of his Government.

1. Ex. 2622, Tr. 22,586, Ex. 3093, Tr. 22,717, 23,886, 23,888, Ex. 3908, Tr. 38,850
2. Ex. 2622, Tr. 22,588, Ex. 2608, Tr. 22,717, Ex. 2628 Tr. 38,850
3. Defense Summation H-18

32. After hostilities broke out, his efforts were devoted to ending them. His next interview with Litvinov was on 4 August 1938. He began it with the statement: "In accordance with instructions received, he had to make a report regarding the border incident,"[1] that he proposed "immediate ceasation of hostilities on both sides and settling of the matter in diplomatic negotiations," and said that the Japanese Government was prepared to embark upon concrete negotiations.[2] Litvinov rejected the proposal, saying that it was impossible, while fighting was going on, to consider peaceful settlement of the problem, that first of all the inviolability of the boundary as claimed by Soviet Russia must be guaranteed.[3] SHIGEMITSU replied that the proposal related only to the cessation of hostilities, that the juridical questions regarding the border should be considered later, that even the Soviet contention that the boundary passed over the summit did not give it the right to occupy the entire hill.[4] Again the spirit behind the proposal of the Japanese Government made by SHIGEMITSU was clear: end hostilities,

1. Ex. 2635, Tr. 22,826
2. Ex. 2635, Tr. 22,826
3. Ex. 2635, Tr. 22,826, 22,827
4. Ex. 2635, Tr. 22,831

then settle the border. At no time during this interview or any other did he demand that Japan's claims be satisfied as a prerequisite for the cessation of hostilities.[1] Instead, Litvinov demanded that all Russian claims be acceded to before cessation of hostilities.[2]

33. The prosecution's summation admits: "On August 6, 1938, Zaozernaya (Changkufeng) Hill was cleared of Japanese troops by regular troops of the Soviet Army."[3] This was affirmed by Litvinov in the next interview with SHIGEMITSU on 7 August 1938 during which he stated: "Japanese troops were forced to evacuate Soviet territory,"[4] and again: "According to my information there were no longer any Japanese troops in Soviet territory."[5] We do not admit of course that Japanese troops were ever in Soviet territory, but it is significant that, despite his statement that there were no longer Japanese troops on Russian territory, Litvinov again refused to agree to a cessation of hostilities.

34. The final interview between the two men during the course of the incident took place on 10 August 1938. At this interview SHIGEMITSU said

1. Pros. Summation SS-34
2. ~~Ex. 2635, Tr. 22,826~~
3. SS-9
4. Ex. 2638, T. 22,855
5. Ex. 2638, T. 22,856

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2. ~~Ex. 2635, Tr. 22,826~~
3. SS-9
4. Ex. 2638, T. 22,855
5. ~~Ex. 2638, T. 22,856~~

that the danger of hostilities was due to the fact that the troops of both countries stood opposite each other in one line,[1] the very danger which he had envisaged and to which he had called attention in the first interview he had with Litvinov on 20 July. He proposed that cessation of military activities be accompanied by withdrawal of the troops of both sides from that line, so that, after fighting had ceased and the border country was calm, it would be possible to proceed to the demarcation of the border.[2] This Litvinov refused, stating that no Russian troops would be withdrawn; he insisted instead on the unilateral withdrawal of Japanese troops.[3] To this, in order to end the fighting, SHIGEMITSU agreed.[4] Later, as a result of a directive from the Kremlin, Litvinov says in his diary: "I had decided not to insist on the necessity, for justice' sake, for the Japanese troops to retreat one kilometer."[5] SHIGEMITSU accepted this final proposal,[6] and on the following day an agreement for cessation of hostilities on that basis was signed by SHIGEMITSU and Litvinov,[7] and later, forces of both sides were withdrawn.[8]

1. Ex. 2716A, Tr. 23,906
2. Ex. 2716A, Tr. 23,906
3. Ex. 2716-O, Tr. 23,909
4. Ex. 2716D, Tr. 23,910
5. Ex. 2716D, Tr. 23,911
6. Ex. 2639, Tr. 22,869
7. Ex. 273, Tr. 22,875-6
8. Ex. 2641, Tr. 22,878

35. In our General Summation[1] we have argued that, since this matter was settled by this agreement between the two countries involved without any demand for punishment and later a Neutrality Pact was signed between them, that should end the matter. We have also argued that this was a border incident, not a war.[2] I shall not repeat those arguments here. But even if the Tribunal decides that this was a war, we submit that there is no evidence that the accused SHIGEMITSU took any part in planning, preparing, initiating, or waging it. He was neither in Tokyo nor at the scene of the fighting. He neither commanded nor controlled any troops fighting in it. There is no evidence that he took any part in any decision regarding it. He had no authority to order, authorize, or permit. He was a diplomat acting under instructions. Furthermore, the record of these interviews shows that he devoted his efforts to preventing the outbreak of hostilities, then after the commencement, to end rather than continue them.

36. Later, negotiations were started for the formation of a commission to mark the boundary. In its Summation, the prosecution says that SHIGEMITSU only then consented to recognize the Hunchun

1. Defense Summation H-8
2. Defense Summation H-8, H-20.

Border Protocol and the map attached thereto as basic documents for the delimitation of the border line, thus admitting that he was wrong and that his demands had been unlawful.[1] The Japanese contention that the border was the west side of Lake Khasan was at all times based on its interpretation of the Hunchun Border Protocol. It had from the first interview recognized it as a basic document; had, in fact,[2] based its claim on its interpretation of it. SHIGEMITSU had stated at the first interview that that map should be considered as well as other maps,[3] and, at these later interviews after fighting ceased, he did not admit that the Japanese contention was wrong, otherwise there would have been no reason for the formation of a commission. In the interview on 21 August 1938, he insisted that other materials be taken into consideration.[4] Again on 31 August he said that his understanding was that the commission would consider other material and Litvinov agreed.[5] The understanding therefore was that the Hunchun Border Protocol was a basic document, its interpretation would be decided by the commission together with that or other materials which might be submitted.

1. SS-11
2. Ex. 2633, Tr. 22,810
3. Ex. 2633, Tr. 22,807
4. Ex. 2643, Tr. 22,905
5. Ex. 2646, Tr. 22,915

37. The prosecution in its summation says[1] that after the Lake Khasan Incident, SHIGEMITSU could not remain as Japanese Ambassador in Moscow, the implication being that he had become persona non grata. There is no evidence of this in the Record. In fact, the evidence is directly to the contrary. Foreign Minister UGAKI testified that his transfer to London was a promotion, that he had heard from no one in Russia nor from anyone else that the Soviet Union did not desire him to remain as Ambassador, nor that that country was dissatisfied with his work. He testified: "I know that he had done his best to carry out the policy of the Government to remain at peace with the Soviet Union, and that he had been successful and therefore recommended his promotion."[2] He further testified that the persons most responsible for the peaceful settlement of the incident were SHIGEMITSU and himself.[3]

38. I submit that there is no evidence against this defendant on the Counts involving Russia, Counts 17, 25, 35 and 52.

1. Prosecution Summation SS-12
2. Ex. 2715, Tr. 23,871
3. Tr. 23,903

Ambassador to Great Britain

39. The accused was appointed Ambassador to Great Britain in September 1938.[1] He had been recommended for the promotion by General UGAKI, the Foreign Minister.[2]

40. While still Ambassador in Moscow, he expressed to his American colleague Joseph E. Davies his eagerness to prevent war in China spreading into conflict between Japan and the United States.[3]

41. His efforts while Ambassador to maintain good relations between Great Britain and Japan and to avoid rather than plan war are shown in many documents, submitted in his defense, which I shall mention later. The prosecution, however, cites certain telegrams which they argue show him to have been an adherent of aggression. I shall analyze these documents, since in my submission they show that he was striving to prevent the war in Europe from spreading to East Asia, to keep the peace.

42. First is a telegram from SHIGEMITSU to Foreign Minister ARITA dated 23 March 1940.[4] In this message written before Germany started its intensive warfare on the western front, the Ambassador

1. Ex. No. 123, Tr. 776
2. Ex. No. 2715, Tr. 23,871
3. Ex. No. 3546, Tr. 34,508
4. Ex. 1016, Tr. 9674-82

was reporting a conversation with R. A. Butler, Undersecretary of Foreign Affairs.[1] He tells Butler: "It must be a matter of congratulation if some compromise can be found between the new Central Government and the Chungking Government." Butler in reply says that he hopes the new government will be successful and that the British Government in settling the Tientsin problem is expressing her desire to be of service.[2] Later SHIGEMITSU tells Butler that the authorities of both countries should strive for collaboration and conquer every difficulty.[3] Butler says that SHIGEMITSU has outlined a large picture of the international relations of the world and that he is of the same opinion.[4] I submit that in this telegram SHIGEMITSU is shown performing the normal functions of an Ambassador, that it shows no plans for war, but rather a desire for good relations between the country which he represents and the country to which he is accredited.

43. The prosecution next[5] quotes a part of a sentence from a telegram sent by SHIGEMITSU to Foreign Minister ARITA dated May 13, 1940,[6] and says

1. Tr. 9676
2. Tr. 9677
3. Ex. 1016, Tr. 9679
4. Ex. 1016, Tr. 9680
5. Ss-12, Tr. 9685
6. Ex. 1017, Tr. 9683

that he urges the latter to "apply our national policies for China and the South Seas in accordance with the policy to make our situation in East Asia firm and stable." The prosecution omitted the first part of the sentence. Including it, this sentence reads: "Taking into consideration the superiority of Germany on land, that of Britain and France at sea, we have to apply our national policies for China and the South Seas in accordance with the policy to make our situation in East Asia firm and stable."[1] I submit that this shows no planning of war against the great naval powers, but instead recommends against war. The telegram taken as a whole makes this even more clear. He predicts that even after the occupation of the coast lines of Holland and Belgium, which apparently has not yet been completed, Hitler will not stop but the scale of warfare will increase, a prediction which was, of course, true; that Japan must be prepared for all possible eventualities and should, therefore, state her policy. He recommends three principles: (1) Japan shall not change the status quo; (2) that no country either belligerent or neutral shall inter-

1. Ex. 1017, Tr. 9685-6
2. Ex. 1017, Tr. 9684

fere with the status quo; and (3) that the interests of the natives of the South Seas be the primary consideration.[1] In view of Japan's relations with the United States, Soviet Union and belligerent countries he recommends urgently conciliation between the Wang Ching-wei Government and the Chiang Kai-shek Government and between the Chiang Kai-shek Government and Japan regardless of conditions.[2] He points out that even if Germany's success on land is decisive, the naval power of Britain and France will remain strong so that, even if France was overwhelmed, the war will not end, that the victory of Germany would solidify the unity of Britain and France even in defeat, and that if Hitler's success on land is kept in check, the power of those two nations will remarkably rally.[3] I submit that all these predictions were true, and that the policy he advocated was a policy opposed to the spread of war to East Asia rather than one of planning war.

44. The prosecution then[4] quotes excerpts from SHIGEMITSU's telegram to ARITA of May 25, 1940.[5] This telegram was written after the trend of battle

1. Ex. 1017, Tr. 9684
2. Ex. 1017, Tr. 9685
3. Ex. 1017, Tr. 9685
4. SS-13
5. Ex. 1018, Tr. 9687

had become clear. He speaks of the firm resolution of both Britain and France, but states that Japan must be prepared to cope with the situation if these two great powers which occupy so much of the Far East are defeated, leaving Japan as the only great power in the Far East. I submit that this was a problem which any Japanese diplomat must necessarily consider and report to his chief. His recommendations are made "In order to prevent the war to spread into East Asia."[1] They include the withdrawal of belligerent troops from China and the three-hundred miles principle which had already been advocated for the Western hemisphere. He recommends that all this be done by diplomatic procedure rather than under the pressure of military side or of public opinion.[2] As a Japanese diplomat, he recommends the strengthening of the Japanese diplomatic foundations by peaceful means in preparation for the ending of the war. Here again I say he is recommending measures which he believes will prevent the spread of war, rather than planning war.

45. The prosecution in its summation[3] quotes excerpts from his telegram to ARITA dispatched

1. Ex. 1018, Tr. 9689
2. Ex. 1018, Tr. 9690
3. SS-14

about a month later, in June 1940.[1] This telegram was written after France had been overrun and was about to surrender.

1. Ex. 1019, T. 9691-3

The conquering country was Germany. Therefore he states that if the districts of East Asia and the South Seas should be owned by another great power, Japan might be driven to risk war with that country and the stability of East Asia would deteriorate.[1] I submit that this refers to Germany, the conquering country. He says that the British Empire has made it clear that she will continue the war even if France should succumb, that she shows confidence with regard to any invasion of England by Germany and that it is evident that this invasion cannot be as easily carried out as in the case of France.[2] He says, however, that it is evident that even after the war the influence of Europe in the East will be lessened and that Japan must take this into consideration in defining her general position in East Asia.[3] I submit that this was only a prediction and that the events that have followed have shown its truth. He states that the districts of Greater East Asia should not be exploited as plantations[4], and I submit that this is the natural and justifiable attitude of an Oriental. The important part of the telegram is his recommendation that Japan state its foreign policy to be, that "Japan

1. Ex. No. 1019, Tr. 9,693
2. Ex. No. 1019, Tr. 9,693
3. Ex. No. 1019, Tr. 9,693
4. Ex. No 1019, Tr. 9,692

is gravely concerned with the stability of East Asia, including the South Seas, and is resolved that the spread of European War must be prevented, and is taking policy to exclude the conditions destructive to said stability and to prevent those which may be destructive."[1] I submit that this is grave counsel against the spread of war rather than planning war.

46. In its Summation[2], the prosecution quotes from the message from Ambassador SHIGEMITSU to Foreign Minister MATSUOKA of August 5, 1940[3]. The telegram is addressed to a man who favors an outright alliance with Germany and is in a position to bring it about and SHIGEMITSU is recommending such a policy not be adopted. He urges that Japan instead of entering into any alliance with Germany adopt a policy under which she will retain independence of action. He points out that, while Soviet Russia is at that time following a parallel policy with Germany, she retains the right to compromise with Britain. He points out that the policies of Britain and America are not joint but parallel policies, and that the manner in which they are applied will depend on Japan's attitude He says: "If we carry out our Greater East Asia policy

1. Ex 1019, Tr. 9,692
2. SS-13, SS-14
3. Ex. 1023, Tr. 9,712
4. Ex. 1023, Tr. 9,714 - 9,715

with a reasonable fair and square attitude, we may properly expect Anglo-American obstructions to be removed."[1] He warns against powerful movements which would throw Japan into conflict with Britain and America, which would expand the China Incident into world war. He says one of these is a movement to draw Japan into conflict by making Japan provoke Britain and America. Here again he fears the spread of war to East Asia and warns against it.[2] In regard to China, he says, "I believe that to show a liberal minded attitude toward settling the China problem expresses not weakness but strength on our part."[3] Then he says: "In view of our high international position it would be improper for us to be victimized by other countries, not to speak of adopting an attitude of supplication or subordination."[4] And this, I submit, can only apply to Germany for he follows it with a statement that it is necessary to improve Japanese relations with the Soviet Union and to proceed with scrupulous consideration and prudence in Japanese relations with Great Britain and America.[5] Even in his reference to the smaller nations,[6] one of which having just been conquered by Germany, gravely affecting the stability of

1. Ex. 1023, T. 9,715
2. Ex. 1023, T. 9,715
3. Ex. 1023, T. 9,715
4. Ex. 1023, T. 9,716
5. Ex. 1023, T. 9,716
6. Ex. 1023, T. 9,713

the Far East, and whose colonies were therefore in danger of being claimed by her, I submit there is no recommendation for war. Certainly there is no evidence of any planning of war, of use of force to carry out national policy, rather the reverse. He did not occupy any position in which such plans could be made. He took part in no conferences in which decisions were made. He recommended against an alliance with Germany since by entering into alliance with Germany, Japan would lose her freedom of action to reach an adjustment with the Western Powers.[1]

47. His recommendations were not followed. In signing the Tripartite Pact on 27 September 1940 Japan, by entering into an alliance, gave up her right to act independently of Germany, to reach an understanding with Great Britain and the United States inconsistent with that Pact, the very thing he feared and warned against.

48. During the succeeding months, he sent and received many telegrams, some of which have been offered in evidence and none of which is consistent with plans or preparations for war. We may be certain if there had been any such telegrams, the prosecution would have produced them. The message from Foreign Secretary Eden to MATSUOKA of 7 February 1941 was forwarded saying that Japan, because of her advantageous geographical

1. Ex. No. 1023, T. 9,712, 9,713, 9,716

position, should remain aloof from the war,[1] particularly after four years of the China Incident; that England is not decadent, that she had the unlimited support of the United States; that since the crisis of the bombing of London in September, her power had increased and she would not be defeated.[2] Again Prime Minister Churchill's message to the Japanese Government, 24 February 1941, was forwarded, in which Mr. Churchill said that even now His Majesty's Government feels well assured of their ability to maintain themselves against all comers, and they have every reason to hope that within a few months they will, with rapidly increasing supply of materials which is coming from the United States, be overwhelmingly strong.[3] SHIGEMITSU in two telegrams, one dispatched 24 February 1941[4] and the other 25 February[3] reported Churchill's conversations with him on the 24th, in which the Prime Minister said that the British had a firm resolution for prosecution of the war and that it would end in victory on the side of Britain. I mention these because they were also SHIGEMITSU's own views. He brought back that very message to his government when he returned to Tokyo in June of the same year. He himself had been

1. Ex. 1039, T. 9,785
2. T. 9,787
3. Ex. 1049, T. 9,823
4. Ex. 1048, T. 9,819
5. Ex. 1051. T. 9,828
6. Ex. 1048, T. 9,819; Ex. 1051, T. 9831

in London during the crisis of the war and knew what survival of the crisis meant.

49. The evidence of the men who knew him in London shows his feeling with regard to his country's signing the Tripartite Pact and his efforts, despite it, to maintain good relations with Great Britain. The day after the Pact was signed Hillman[1], the head of the International News Service in Europe, talked with him and found him annoved and depressed by the conclusion of the Pact, of which he had been given only half-day's notice. But he intended to remain in London as long as possible in order to mitigate the effects of the Pact and by diplomacy to prevent its being implemented.[2]

50. The statement of Lord Hankey, Member of Mr. Churchill's Cabinet, outlines some of these efforts.[3] Early in September 1940, before the Pact was signed, SHIGEMITSU conferred with Lord Hankey, Lord Lloyd,[4] Chairman of the British Council, General Piggott and others regarding the deterioration of Anglo-Japanese relations. It was proposed that an official British mission headed by a minister of cabinet rank should visit Tokyo to make the British case better known and to counter the propaganda of Nazi visitors in Japan. Viscount Halifax,

1. Ex. 3551, T. 34,533-4
2. Ex. 3551, T. 34,534
3. Ex. 3547, T. 34,511
4. Ex. 3548, T. 34,512

Secretary of State for Foreign Affairs, had approved these talks. But the plan for this official mission was dropped because of the signing of the Tripartite Pact a few days later on September 27. Next it was proposed that instead of sending a government mission, a mission headed by Lord Hankey be sent by the British Council. Lord Lloyd undertook to report this proposal to the Foreign Office. Since relations continued to deteriorate, the opportunity for the visit passed.[1] The talk then centered around Mr. MATSUOKA's pending visit to Berlin and Rome in the spring of 1941, the bad effect that it had on British public opinion and the dangers that Japan might pass from passive to active membership in the Axis. SHIGEMITSU expressed the opinion that even if the mission could not go to Japan it would be useful to send influential British citizens to explain the Allied situation to Japan, to emphasize the importance of recent victories in the Mediterranean and to counter the continuous contacts between Germany and Japan. It was proposed that MATSUOKA be persuaded to come to London to counteract the effects of his visit to Berlin and Rome.[2] Lord Hankey then urged that the Ambassador meet MATSUOKA at some neutral point in Europe, preferably

1. T. 34,513-4
2. T. 34,517

Switzerland. Lord Hankey appealed direct to the Prime Minister for priority passage for him but the difficulties of transport across war-torn Europe from Lisbon to Berne made it impossible for the Ambassador to reach MATSUOKA before his return to Tokyo.[1] General Piggott in his statement[2] describes SHIGEMITSU's positive attitude; he urged that they not await developments, but counterattack. Lord Sempill in his affidavit tells of his talks with SHIGEMITSU about this trip and of SHIGEMITSU's desire to advise MATSUOKA against closer cooperation with the Axis. SHIGEMITSU was to take with him a number of points which Prime Minister Churchill wanted to put to the Japanese Foreign Minister and Lord Sempill describes SHIGEMITSU's obvious enthusiasm over this important and effective material.[3] R. A. Butler, former Undersecretary of Foreign Affairs, identifies these points as Exhibit 1062, and states that Mr. SHIGEMITSU was selected as a representative to bring them before MATSUOKA.[4] In this letter, setting forth these questions, the Prime Minister says: "From the answers to these questions may spring the avoidance by Japan of a serious catastrophe and a marked improvement

1. T. 34,516 - 34,520
2. Ex. 3518, T. 34,522
3. Ex. 3549, T. 34,525
4. Ex. 3550, T. 34,529

between Japan and Great Britain, the great seapower of the west."[1] I ask the Tribunal to read that prophetic letter. No wise statesman could have read it without thinking; "Will it not be disastrous in the end for us to tie our fortunes to Germany and Italy, should we not keep the peace with the Western Powers?" SHIGEMITSU would not have wanted to carry them unless he had desired Japan to avoid active collaboration with the Axis and remain at peace with Britain. The very nature of the letter shows the good faith of the messenger selected to deliver it. It carried with it a note of warning that, due to Japan's accession to the Tripartite Pact, the United States was more likely to enter the war, that the Axis had passed its peak of strength. It was the very message that SHIGEMITSU brought back with him when he returned to Tokyo that summer; Britain had not been defeated and would not be defeated, America's aid would increase, with that great material aid the issue was not in doubt, that Japan should not become involved in war with these two countries, but settle her differences with them and remain at peace. It was good practical advice which it was hoped would be effective in Tokyo during that spring and summer of 1941.

1. Ex. 1062, T. 9,871

51. His efforts were not confined to government circles; he used the press. At his suggestion H. A. Gwynne of the Morning Post, editor of one of the great London dailies, ran leading articles pointing out that the war party was losing for Japan the friendly feeling of Britain which dated from the 1914-1918 War.[1] The very quality of the men with whom he dealt contradicts any suggestion that he was misleading them or that they were being taken in. They had all had the utmost experience in world affairs. They were all great patriots. T. V. Soong, Lord Killearn, Nelson Johnson, Powell in China, Davies in Russia, Kennedy, Lord Hankey, Lord Lloyd, Piggott, Butler, Gwynne, Winston Churchill in Britain -- does anyone think they could have been taken in? Would he have selected T. V. Soong in 1931, Lord Hankey and Lord Lloyd as persons to go on missions to maintain good relations with his country if he had not wanted such good relations?

52. If any further proof of his good faith is needed, it is found in what he said and did when he returned to his own country in the summer of 1941, for, despite the fact that he was back among his countrymen and there was great resentment there against the nation from which he had come so that his attitude could not

1. Ex. 3552, T. 34,536-34,538

Morse & Whalen

53. KIDO, in his Diary entry of 23 July 1941, tells of SHIGEMITSU's report to the Emperor a few days after his arrival in Tokyo. He told the Emperor of the determination of Mr. Churchill and the British people to win the war despite the defeat at Dunkirk, the very statement that Mr. Churchill made when he conferred with him in London in February.[1] On September 25, 1941, he told KIDO of the firm determination of Britain and America. He pleaded that Japan should settle all outstanding problems with America and that Japanese-American diplomatic relations should be adjusted.[2] On many occasions he told KIDO that, from his experiences in Europe, Japan should not become involved in the European War.[3]

54. Late in August or early September, 1941, he conferred with General MUTO, telling him that there was no likelihood of Britain's losing the war, that there would be no collapse of Britain, that the United States would seriously assist her and that no one must fail to take into consideration the great natural strength of America.[4] Most important and significant is his report to his chief, the Foreign Minister, Admiral TOYODA.[5] I quote from his affidavit:

1. T. 31,218
2. T. 31,217
3. T. 31,231
4. T. 33,173
5. Ex. 3554, T. 34,541

have been very popular, he consistently advised that Great Britain and America were determined and invincible and that Japan should not make them her enemies in war. He arrived in Tokyo about 20 July 1941, and had many talks with Sir Robert Craigie, British Ambassador to Japan, and now member of the United Nations War Crimes Commission. He told Sir Robert that he had returned on leave because he believed that he could do more in Tokyo than in London to arrest the deterioration in Japan's relations with the Western Powers.[1] SHIGEMITSU, Admiral TOYODA, the Foreign Minister, and Sir Robert met at a time when a critical stage had been reached in the Washington negotiations and SHIGEMITSU urged the British Government play its part in averting a breakdown. Later, at Mr. SHIGEMITSU's request, Mr. YOSHIDA, former Ambassador and recently Premier, asked Sir Robert for suggestions for ending the deadlock in regard to Indo-China; but Sir Robert was precluded by his instructions from taking any official part.

1. Ex. 3555, T. 34,546
2. T. 34,547

Morse & Whalen

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1. T. 31,218
2. T. 31,217
3. T. 31,231
4. T. 33,173
5. Ex. 3554, T. 34,541

"In his report to me which was oral about the European situation, he particularly emphasized the fact that Great Britain would never be defeated in the war with Germany, and he stated his opinion that Japan should in no case be involved in any war, and that the negotiations then under way with the United States should by all means be brought to a successful end."

55. It is significant that although the defendant was in Tokyo for the five months before Pearl Harbor, and is accused of being a member of the general conspiracies[1] he is not charged on any of the counts with initiating any war[2] nor with conspiring to murder[3] anyone on that fateful day.

56. I submit that there is no evidence against this defendant on Counts 1, 4, 5, 7 to 16, 23 and 29.

PRISONERS OF WAR

57. The defendant became Foreign Minister on 20 April 1943 and occupied that office until 13 April 1945. During the period many protests were received from neutral powers representing the Allied countries, which may be divided into two categories: (1) Allegations that atrocities had been committed by Japanese

1. Counts 1, 4 and 5
2. Counts 39-43
3. Counts 37,39

troops or that prisoners of war had been subjected to maltreatment or neglect, and (2) Requests for permission to inspect camps and requests to interview prisoners without the presence of a guard. The proof alleged against this defendant is that he made answers to these protests, that the statements in these answers were false, and that he denied permission to visit camps and to interview prisoners without the presence of a guard. It is submitted, however, that in order to prove its case against this defendant, if Count 55 alleges a crime punishable under the Charter, and we have argued that it does not,[1] the prosecution must prove beyond all reasonable doubt that he with others deliberately and recklessly disregarded their legal duty to take adequate steps to secure observance and to prevent breaches of the laws of war, and that as a direct result atrocities were committed or that prisoners of war were neglected or maltreated. We submit that no such proof has been produced.

58. In order to have some duty with respect to atrocities committed during operations or for neglect or maltreatment of prisoners of war, it must be proved that this defendant had the legal duty and the power of command by which he could command or forbid

1. Count 55 of the Indictment

and it is submitted that he had none; he was a civilian and, of course, commanded no troops either engaged in operations or in charge of internment or custody of prisoners of war.

59. Troops engaged in operations were under the command of the Army Commanders who in turn were under the jurisdiction of the Chief of the Army General Staff. Prisoners of war from the time of capture until they were delivered to internment camps were in the custody of such Army Commanders. Responsibility for their custody from the date of their internment was the responsibility of the Minister of War.[1] The Imperial Ordinance on Prisoner-of-War Internment camps provides in part:[2]

"Article 1

"The Prisoner-of-War Internment Camp is a place under the jurisdiction of the Minister of War for the internment of prisoners of war.

"Article 3

"The Prisoner-of-War Internment Camp shall be administered by the Commander-in-Chief of an Army or a garrison as provided for by the

1. Ex. 3655, T. 36,412-3.
   Ex. 3098, T. 27,795 to 27,696
2. Ex. 92, not read; Ex. 1965-A, T. 14,445-6

Minister of War and shall be superintended by the Minister of War."

The Minister of War was also responsible for the treatment of prisoners of war. The Regulations for the Treatment of Prisoners of War[1] provide in part:

"Article 2

"The Prisoner of War Administration Division shall be established in the Ministry of War for the conduct of all affairs relative to the treatment of prisoners of war and civilian internees in the theatre of war.

"Article 4

The Division head shall administer the affairs of the Division under the orders of the Minister of War, and the staff members shall carry out their duties under the orders of the Division head."

60. It is unnecessary for the purposes of this Summation to ascertain how this responsibility was divided; sole responsibility was at all times in the military authorities, and none was left over for the Foreign Minister or any other civilian.

61. The duties of the Foreign Minister are set forth briefly in the Imperial Ordinance for the

1. Ex. 1965-A

Organization of the Ministry of Foreign Affairs which provides briefly in Article 1[1]:

"The Foreign Minister shall take charge of the administration of matters concerning state affairs relative to foreign countries."

He administers such affairs, he does not control them. He is not in any sense a law enforcement officer, particularly over troops engaged in operations or commanding internment camps over which he had no control or command and over whose activities he had no competence. He is the contact of the Japanese Government with foreign countries. Since protests are communications from foreign countries they were received by him. Since the answers were communications to foreign countries they were forwarded by him.[2]

62. This duty gave him no authority over the treatment and custody of prisoners of war and without such authority he could have no duty or responsibility for their treatment or custody. That he had no such duty is affirmatively proved by all the witnesses produced by the defense, none of whom was cross-examined on this subject,[3] and by witnesses called by the

1. Ex. 76 (See Language correction 5 March 1948)
2. Ex. 3646, T. 35,771
3. Ex. 3040, T. 27,147, 27,148, 27,152;
   Ex. 3646, T. 35,768-9, 35,771
   Ex. 3895, T. 38,782; Ex. 3898, T. 38,787-88

prosecution, not only a Foreign Office official[1] but high ranking officers of the Japanese Army who testified that such authority and responsibility was that of the War Minister.[2]

63. General TANAKA testified graphically:

"In Japan the handling of prisoners is quite different from other countries, and the Prisoner-of-War Information Bureau and administration of prisoner-of-war matters were under the supervision of the War Minister himself. And, therefore, in so far as the actual handling of matters related to prisoners of war was the responsibility of the War Minister himself, and the Foreign Office was merely a post office which handled the communication."[3]

1. T. 15,530
2. T. 14,843, 14,883, 14,365, 14,419
3. T. 14,365

64. Many witnesses have been produced by both the prosecution and defense to testify as to the responsibility of various Army and Navy officers and officials for prisoners of war. While some of the evidence is conflicting as to the division of responsibility between such officers and officials, none has ever testified that the Foreign Office had any responsibility for their custody or treatment.

65. The duty of the Foreign Office then was only the receipt of protests and the forwarding of answers to protests. We submit that from this duty, no authority over or responsibility for the treatment of prisoners of war can be derived. But even here the authority and duty of the Foreign Minister was strictly limited. He was not given the duty, authority, or means to investigate and, it follows, could not be held responsible for the answers. It was the authority and duty of the Minister of War, not the Foreign Minister, to investigate the facts alleged in the protests and to communicate the information on which answers to the Protecting Powers were based. Imperial Ordinance No. 1246, promulgated 29 December 1941[1] shortly after the war started, established the Prisoner-of-War Information Bureau, and reads in part as follows:

1. Ex. 1965-A, T. 14,440-2

"Article I

"The Prisoner-of-War Information Bureau shall be under the control of the Minister of War and shall manage the matters mentioned below:

"1. The investigation of internments, removals, releases on parole, exchanges, escapes, admissions into hospitals, deaths of prisoners of war, and the maintenance of records for each prisoner.

"2. The communications, correspondence and information regarding the conditions of the prisoners of war.

* * * * *

"Article 4.

"The director administers the affairs of the Bureau under the direction and supervision of the Minister of War.

"Article 5

"In regard to matters falling within his jurisdiction, the director may demand information from any military or naval unit concerned."

66. The investigations were to be made by

that Bureau. It had the authority and means of making them since it could demand information from the units concerned, a right which the Foreign Minister did not have. It had jurisdiction over information regarding Navy prisoners of war as well as those in the custody of the Army.[1] It was set up shortly after the beginning of the war pursuant to International Treaty.[2] The ordinance is countersigned only by the Premier and the Ministers of War and Navy.[3] Under Japanese law an ordinance is countersigned by the Premier and any state minister in charge.[4] The fact that the Foreign Minister was not required to sign this ordinance voids any suggestion that he was in any way responsible for the Bureau or its activities.

67. That the Foreign Office had no authority or duty to make an investigation and no facilities to do so is proved affirmatively, not only by the testimony of witnesses called by the defense, on which matters none was cross-examined,[5] but also by witnesses called by the prosecution, not only a Foreign Office official[6] but also a high-ranking

(1. Tr. 14,879, 14,884
2. Hague Convention IV, Art. 14, Tr. 14,842, 14843
3. Ex. 92-A, not read, Tr. 35,585
4. Ex. 3637, Tr. 35,583.
5. Ex. 3040, Tr. 27,148, 27, 152;
Ex. 3898, Tr. 38,788, 38,789, 38,792
6. Tr. 15,530)

Army officer.[1] Its officials were in fact not permitted by the Army to visit such camps.[2] That the replies were therefore necessarily prepared on the basis of this information is admitted by the prosecution.[3] It was the duty of the Foreign Office to forward such replies; it would have violated its duty, had it not done so.

68. The manner in which protests were handled is described in the prosecution's General Summation on prisoners of war.[4] It is stated: "Considered as a matter of machinery no fault can be suggested with regard to this system."[5] This, I submit, indicates that the Foreign Office performed its duty and its only duty in regard to such protests. The protests were promptly translated and forwarded by the Foreign Office to the military authorities.[6] They were forwarded by the military authorities to the commanders of the prisoner-of-war camps in the area concerned and from these sources a reply was prepared and forwarded to the Foreign Office.[7] That it was the duty of the military authorities to supply

(1. Tr. 14,419
2. Tr. 38,901
3. Tr. 15,530-1, Ex. 3040, Tr. 27,151, Ex. 3646 Tr. 35,771; Ex. 3898, Tr. 38,879.
4. J-69 to J-72 (5. J-73)
6. Tr. 15,528; Ex. 3040, Tr. 27,148, 27,151, Ex. 3898, Tr. 38,789.
7. J-71, Tr. 14,875, 14,876, 14287)

the information on which replies were based is apparently admitted by the prosecution, since in its general summation[1] it states, in referring to the replies of the Foreign Minister on protests regarding camps in Thailand:

> "It is therefore obvious then when SHIGEMITSU sent his replies of 24 July and 1 October 1943, it was known to the military authorities in Tokyo whose duty it was to supply him with information that the replies were not in accordance with existing facts."[2]

Replies to Protecting Powers were at all times based on the information received from the military authorities and were promptly forwarded to the Protecting Powers.[3] The Foreign Office constantly followed up its requests in writing, orally and in conferences with Army and Navy officers.[4] Until the information was received from the military authorities no answer could be made. There were delays on the part of the War Ministry, but there is no proof that the Foreign Office was responsible for

(1. J-87
2. Ex. 2023 A-2, Tr. 14,792, Ex. 2017, Tr. 14,747
3. Tr. 15,530-1, Ex. 3040, Tr. 27,151; Ex. 3646, Tr. 35,771, Ex. 3898, Tr. 38,879
4. Tr. 15,529, Ex. 3040, Tr. 27,164, Ex. 3898 Tr. 38,789, 38,790)

any such delays. Most protests required information from field commanders or from camps in distant places and communication was at all times difficult and, late in the war, because of the effectiveness of the submarines, almost impossible so that replies could seldom or never be forwarded immediately.[1] At times the Army was reluctant to answer.[2] Some protests were perhaps not answered though whether or not a reply was made in individual cases is difficult to determine due to the destruction of documents by Allied incendiary bombing during the war and destruction by fire prior to the surrender and when SHIGEMITSU was not in office.[3] But there is no evidence that the Foreign Office withheld information or did not accurately, faithfully and promptly forward such information as it had received from the military authorities. The Foreign Office could not forward replies unless and until it received the information from the military authorities. It would have violated its duty had it done so.

THE PRESIDENT: We will recess for fifteen minutes.

(1. Ex. 3103, Tr. 27,790, 27,792, 27,793, Tr. 27,794-6
2. Tr. 14,848.
3. Prosecution Summation J-69)

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(1. Ex. 3103, Tr. 27,790, 27,792, 27,793, Tr. 27,794-6
2. Tr. 14,848.
3. Prosecution Summation J-69)

(Whereupon, at 1445, a recess was taken until 1500, after which the proceedings were resumed as follows:)

Sprat & Duda

MARSHAL OF THE COURT: The International Military Tribunal for the Far East is now resumed.

THE PRESIDENT: Major Furness.

MR. FURNESS: I shall resume the summation on behalf of the defendant SHIGEMITSU at paragraph 69.

69. The prosecution in its summation against this defendant has listed in footnotes every protest made to the Japanese Government, some before he took office and some after he resigned as Foreign Minister. The prosecution alleges that the facts have been proved. It is not necessary to go into them since all the evidence indicates that the protests were treated uniformly and in a way conceded by the prosecution to be subject to no criticism.[1] They were referred to the military authorites and the answers made were based on the information received from them. Our position was stated by the President when he interrupted the reading of the answer of the Japanese Goverhment to the protest regarding the death march and other alleged atrocities in the Philippines which had occurred long before this defendant assumed office.[2] I quote from the transcript:

1. Summation J-73.
2. Tr. 14,823, 14,824.

"THE PRESIDENT: Colonel Woolworth, do you submit that this material you have been reading establishes breaches of the convention by way of admission or otherwise?

"MR. WOOLWORTH: This is a reply--

"THE PRESIDENT: Or that it implicates the accused in any such breach? I know what the document is, but I would like to know why you are reading it to the extent that you are reading it.

"MR. WOOLWORTH: If the Tribunal please, the sole purpose in reading this reply by SHIGEMITSU, who is in the dock, is that it has been proven before in this case that the facts which he denies -- were, as a matter of fact, true, that those atrocities had been committed, and I believe it implicates him.

"THE PRESIDENT: What he says by way of exculpation does not tend to prove his guilt unless in the course of excusing himself he makes admission.

* * * * * * * *

"MR. WOOLWORTH: If the Tribunal please, it appears to the prosecution that the sending of this letter over the signature of the Japanese Foreign Minister, in which statements are contained which have been shown to be absolutely false, carries the imputation of intent on his part and guilty knowledge of the offences which

had been committed.

"THE PRESIDENT: That would be clear if this could be shown to be pure fabrication on the part of the defendant SHIGEMITSU. But it is otherwise if he was passing on information he had obtained from others, his subordinates included."

* * * * * * * *

There is no evidence that the answer to this protest or to any other was a fabrication by the defendant, it is so factual and detailed, stating justification and reasons in many cases, as well as denials that it was obviously based on report of an investigation which had been made by the military authorities.[1]

70. Other answers denied the facts alleged, and the prosecution asserts that these facts have been proved by evidence that they have produced. But there is no evidence that the accused knew of these facts, nor that he did not accurately report the information given him by the military or naval authorities which had made the investigation. An example is the attacks on survivors from Allied merchant ships by Japanese submarines referred to in paragraph SS-32 of the Individual summation. Since the attacks occurred thousands of miles away in the Indian

1. Ex. 2024-A-3, Tr. 14,796 to 14,822, 14,826-7, Ex. 2024-A-4, Ex. 2024-A-5.

Ocean, it is difficult to understand on what theory this defendant could be held responsible. That he requested an investigation, that it was made, and that he accurately reported it is reflected in the evidence. The witness YAMAMOTO, Yoshio, testified:

"22. Q. Were protests received in connection with the sinking of Allied Powers merchant ships by Japanese submarines in the Indian Ocean during the war and perpetration of atrocities on the survivors?

"A. I do not remember the date and the number of times the protests were received, but we did receive some.

"23. Q What steps were taken at the time of the receipt of those protests?

"A The parties in charge of the submarines were asked to make an investigation of those connected with it. Inasmuch as the matter involved operations, the investigation was required to the Naval General Staff and the fact was thoroughly investigated. But as they reached the conclusion that since the Japanese submarines were not involved in the protests we replied to such effect to the Foreign Office."[1]

The reply of the accused was:

"Concerning the matter I have had the competent

[1] Ex. 3066, Tr. 27,382.

authorities make strict investigations in each case indicated; and it is clear that Japanese submarines at least had nothing to do with such facts as are mentioned in the protest."[1]

71. Replies were not apparently made to all the letters requesting the list of prisoners on Wake Island. The list of prisoners of war was not kept by the Foreign Office but by the Prisoner-of-War Information Bureau[2] and there is no evidence that the requests for information were not forwarded in the manner outlined. There is evidence that no reply was received from the Prisoner-of-War Information Bureau or the navy on which a reply could be based. The 2d Section of the Naval Affairs Bureau was the reception organ while the 1st Section prepared the reply.[3] One witness from the 1st Section testified he never heard of certain memoranda inquiring about prisoners, but it is impossible to identify any of these memoranda[4] with any of the evidence in the case. This, if true, would indicate that the protests were never delivered to the 1st Section, that no reply was sent by the navy which the Foreign Office could forward to protecting powers.

1. Ex. 2102, Tr. 15,177.
2. Ex. 1965-A, p. 9, Articles 15 to 18.
3. Ex. 3065, Tr. 27,358-9, Tr. 33,371-2.
4. Ex. 3066, Tr. 27,378.

72. The provisions of domestic law relevant to visits to camps by neutral representatives are contained in the following articles of the Detailed Regulations for the Treatment of Prisoners of War.[1]

"Article 11. Persons who desire to enter the prisoner of war camps shall obtain permission from the commandant of the camp. However, in the case of foreigners, such permission shall be granted by the Minister of War.

"Article 12. An inquiry shall be made as to the object, status, occupation, etc., of any person who desires to enter a prisoner of war camp, and extreme care shall be taken for controlling them and for preventing espionage, and no persons shall be allowed to enter unless it is necessary.

"Article 13. When an interview with a prisoner of war has been authorized, necessary restrictions regarding the place, time of interview, and the range within which the conversation shall be conducted may be imposed for the purpose of control and a guard shall also be present at this interview."

73. I have already shown that the Minister of War had sole jurisdiction over prisoner of war camps. Three requirements are evident from the provisions I

1. Ex. 1965-A, p. 8.

have just quoted and are applicable to all requests by neutral representatives to visit camps whether in Japan or in occupied territories.

(a) Since these representatives were foreigners, only the Minister of War could grant such requests. It was a decision for him to make; the Foreign Minister had no right to make it.

(b) Military security was a paramount consideration and in time of war only military authorities could decide what might endanger such security.

(c) A third person was required to be present at all interviews.

74. Many protests were filed because of the refusal of the military authorities to permit neutral representatives, foreigners, to visit camps. A request by the United States Government that interviews be allowed without the presence of a witness was submitted to the War Minister by the Foreign Ministry in July 1942[1] with a statement that the latter ministry believed the request should be granted. The War Ministry, however, replied:

"I ask you to duly understand that our policy is not to permit the representatives of International Red Cross Committee and of those countries protecting the

1. Ex. 3529, not read.

interests of enemy countries to hold interviews with war prisoners and those interned by the army without the presence of an observer.

"The reasons for drafting this reply:

"1. Article 10 of Detailed Regulations for Treatment of War Prisoners. 'In case any interview with any war prisoner is permitted, considerable limitations should be made, to maintain strict order, as to the place and time for that interview and it should be done in the presence of an observer.'

"2. There is a great danger of this being misused for transmission of secret information."[1]

75. The policy therefore was set long before this defendant assumed office. But it was not only a matter of policy. Under the laws of Japan, only the War Minister could grant permission to the foreigners who were requesting it, and he refused permission on two grounds: (1) military security and (2) Japanese law required presence of a third party. It is submitted that, in conveying this refusal of permission by the Ministry of War to the protecting power, the defendant was performing his duty; if he had not done so, he would have violated his duty and his answer would not have been true.

1. Ex. 3529, not read.

76. From the early days of the war, visits to camps in Japan proper had been made.[1] Some protests were filed because permission was not granted to visit all camps in Japan but permission could only be granted by the Minister of War and the Foreign Minister could only convey his decision to the neutral authorities.[2]

77. Many protests were, however, filed because of the refusal of the military authorities to grant permissions to neutral observers, foreigners, to inspect camps in occupied territories. Here again it was a decision made by the Minister of War who alone had authority to grant such requests,[3] not by the Foreign Minister who had no such authority.[4] Here again in July 1942, long before this defendant assumed office, a request had been submitted by the Foreign Office to the War Ministry which answered:

"Since it is the Imperial policy not to permit visits by agents of the protecting power of enemy countries to prisoners of war and to internees in occupied areas, and the adjoining operational areas, reply should be made accordingly to the Swiss Minister."[5]

The notice of this policy of the War Ministry

1. Ex. 3140, Ex. 3040, Tr. 27,149.
2. Ex. 3367-A.
3. Ex. 1965-A quoted above.
4. Ex. 3898, Tr. 38,789.
5. Ex. 3367-A, See language correction, 16 March 1948.

was given the protecting powers in July 1942, long before this defendant became Foreign Minister.[1] Here again, this was a policy of the military authorities,[2] the grounds for which were reasons of military security in time of war which no civilian had a right to judge.[3] Nevertheless, the Foreign Office continuously endeavored to obtain such permission.[4] At last on 8 December 1944 notice was given that visits would be permitted to camps in the southern area in places where they would not hinder military operations, provided the governments of the Allied Powers would give reciprocal rights to the International Red Cross to visit camps in territories occupied by the Allies, in which Japanese prisoners of war and civilians were interned.[5] The Swiss Minister did not notify the Japanese Government until 7 April 1945 that reciprocity already existed with the United Kingdom,[6] and it was not until 10 May 1945 after SHIGEMITSU had already resigned that the Swiss Minister sent notice that the United States would make arrangements for inspection at Saipan, Guam and Tinian and would endeavor to obtain permission from appropriate authorities for visits to camps in

1. Ex. 2016-A, A-8, A-9, Tr. 14,730.
2. Ex. 3898, Tr. 38,795.
3. Ex. 3040, Tr. 27,150.
4. Ex. 3898, Tr. 38,795.
5. Ex. 2016, A-56, Tr. 14,743; Ex. 3898, Tr. 38,794.
6. Ex. 2016, A-60, Tr. 14,744.

New Caledonia.[1] Camps in Thailand and Singapore were visited.[2]

78. Article 86[3] of the Geneva Convention providing for visits to camps and interviews with prisoners by representatives of third powers without the presence of an observer had been one of the reasons for Japan's refusal to ratify that convention,[4] since it had been stated by the navy that this provision would be harmful from a military point of view. The requirement under that article is not unqualified and we submit that the qualification of military security was one a civilian in time of war could not question.[5] Furthermore, as I have pointed out, its enforcement would have contravened domestic law.[6] These were the two reasons given by the military for refusal to permit visits and obviously they were within the meaning of the phrase mutatis mutandis used by Japan in its declaration that it would so apply the Geneva Convention.

1. Ex. 2016, A-64, Tr. 14,744.
2. Ex. 3898, Tr. 38,799.
3. Ex. 15A-113, not read.
4. Ex. 3043, Tr. 27,179.
5. Defense summation M, paragraph 7, 8.
6. This summation, paragraph 72.

79. It has already been argued that Japan not having ratified Hague Convention IV,[1] was not bound by it,[2] that the declaration that she would apply it mutatis mutandis was not an adherence, but merely an expression of intention,[3] that the meaning of the phrase should depend on the evidence of those who used it,[4] that it was meant certainly to include charges made necessary by conflicts with domestic law[5] since that was one of the reasons Japan had refused to ratify the Convention.[6]

80. We submit that the Japanese Government had in no way extended the meaning of "mutatis mutandis" by stating on 28 April 1944:

"By the above-mentioned intention of the Japanese Government to apply 'mutatis mutandis' the provisions of 1929 Convention relating to prisoners of war to American prisoners of war it is meant that the provisions of the Convention will be applied with modifications necessary to conform with the provisions of existing laws and regulations of the country and with the requirements of the actual situation as it develops."[7]

1. Ex. 15, p. 113, not read.
2. Defense summation E, paragraphs 34, 35.
3. Idem. Paragraphs 35, 36.
4. Idem. Paragraph 37.
5. Def. Sum. M. Paragraphs 4-7.
6. Idem. Paragraph 5, 6; Ex. 3045, T. 27140.
7. Ex. 2024 A-4 Ept read.

81. It had had that meaning from the beginning. TOGO's statement quoted by the prosecution in its summation[1] that

"'Mutatis mutandis' then I supposed to imply that in the absence of serious hindrances the Convention would be applied; I assumed (although this was only an assumption on my part) that when the requirements of the Convention came into conflict with the provisions of domestic law, the former would prevail"

was, as he says, a bare assumption within his own mind. No assurance or commitment to the Allies was made to that effect, all other evidence refutes it. Conflicts with domestic law were one of the reasons Japan had not ratified the Geneva Convention though apparently TOGO did not know of this.[2]

82. TOJO, Premier and Minister of War, at the time the phrase mutatis mutandis was first used testified:

"In response to an inquiry from the Foreign Office regarding the Geneva Protocol, the War Ministry replied that although it could not announce complete adherence to this protocol, it

1. J-52.
2. Ex. 3043, T. 27180.

perceived no objection to the application, with necessary reservations, of its stipulations concerning prisoners of war. In January 1942 the Foreign Minister announced through the ministries of Switzerland and Argentina that Japan would apply the protocol with modification (Junyo) Ex. 1469-1957). By the term 'apply with modification' (Junyo) the Japanese Government meant that it would apply the Geneva Protocol with such changes as might be necessary to conform to the domestic law and regulations as well as the practical requirement of existing conditions."[1.]

83. Compare the statement in the letter of 28 April 1944:

"Modifications necessary to conform with the provisions of existing laws and regulations of the country and with the requirements of the actual situation as it develops."[2.]

And you find no difference.

84. Furthermore, the testimony of MATSUMOTO, who served under TOGO as head of the Treaty Bureau, indicates that this statement of 28 April 1944 in no way changed the meaning of this phrase. In his affidavit he testified:[3.]

1. Ex. 3655, T. 36416.
2. Ex. 2024 A-4 not read.
3. Ex. 3039, T. 27135-6.

Japan had not ratified the Geneva Convention by reason primarily of the relations between the provisions of domestic law with those of the Convention; and the problems growing from this inter-relation would still have given rise to such difficulty in the event of an undertaking to apply the Convention completely and unconditionally. Moreover, it was anticipated that great difficulties in practice would result, as large-scale warfare spread over East Asia, if we were to apply strictly all the stipulations of the Geneva Convention, which Japan had not ratified. It was for these reasons that it was replied that the stipulations of the Convention were to be applied mutatis mutandis. It was the intention of Japan with respect to the treatment of prisoners of war that the stipulations of the Geneva Convention be applied so far as circumstances permitted; in other words, unless there were hindrances or obstacles which made its application impracticable.

85. It is unnecessary to point out that where protests concern the commission of atrocities by combat troops or maltreatment of prisoners, the offenses alleged in the protests had occurred before the protests were received and this defendant could not be held responsible for such offenses. In many

cases as those of the alleged atrocities during and after the Bataan Campaign in the Philippines, they occurred long before this defendant became Foreign Minister on 20 April 1943.[1] The decision to build the Burma-Thai Railroad was made by the Chief of the Army General Staff and the Construction was commenced in June 1942, also long before this defendant became Foreign Minister.[2] Most of the actions or omissions alleged occurred in far-distant theatres of war or in camps in occupied territories also thousands of miles away from Tokyo. The prosecution in its individual summation says that this defendant denied the facts stated in protest, that the answers contained false information and that the evidence submitted by it shows that the answers were also false. We submit that this is beside the point. In no case has any proof been offered that the accused knew that the information upon which these replies were based was false or that he had any reason to believe it was false.

86. Many witnesses among the military and naval men have testified that they had no knowledge of the acts or co[illegible]tions alleged in the protests and

1. Ex. 2016.
2. Ex. 3855, T. 36424; Ex. 475, T. 5524; Ex. 1989, T. 14633.

in many cases disclosed by the evidence. If they did not know, is there any evidence, or can any inference ever be drawn, that this defendant, a civilian in Tokyo, knew of them or had any reason to disbelieve the information which he received denying the facts? I submit that no evidence has been produced and no such inference can be drawn. Rigid censorship was imposed by the military against any reports which gave the impression of any cruel treatment. This would have prevented any knowledge reaching him.[1.]

87. As outlined in the General Summation for the defense, many witnesses testified that the instructions for fair treatment of prisoners of war had been given.[2.] and many reports of inspectors by Red Cross delegates and neutral observers,[3.] the Vatican representatives,[4.] have been introduced into evidence. Letters of appreciation by men who were held prisoners have also been produced.[5.] These indicated no evidence of cruelty and no reports of such men showing bad conditions or cruelty have been offered by the prosecution. That the defendant depended on

1. Ex. 1977, T. 14539.
2. Defense summation, pages 26-29.
3. Ex. 3041-A, T. 27169, T. 17174; Ex. 3042-A, T. 27196; Ex. 3308, T. 30714; Ex. 3309, T. 30184.
4. Ex. 3141, T. 27957.
5. Ex. 3122, T. 27846.

these reports is evidenced by the fact that he cites them in replies to protests.[1.] True, the prosecution has offered evidence that the camps were cleaned up before the inspectors arrived,[2.] and that prisoners were intimidated,[3.] but if these deceived the inspectors, what possible likelihood was there that the defendant could have known anything about the alleged conditions?

88. The prosecution's general summation is replete with statements to the effect that this was known to the Japanese Government." These allegations being analyzed, we find their basis to be protests, the facts of which were denied by the military authorities who had the authority, duty and means to investigate, whereas this defendant had none, broadcasts alleging facts or warnings[4.] which added nothing to the protests and a few reports made by one military or naval man to another military or naval man[5.] without a trace of evidence that this information ever reached the Foreign Ministry. The prosecution

1. Ex. 2024-A-3, pp. 17,18; Ex. 2024-A-4, p. 11; Ex. 2024 A-5, p. 3.
2. Ex. 3843, T. 38153; Ex. 3843-A, T. 38155; Ex. 3843-B, T. 38156.
3. Ex. 3844, T. 38168.
4. Ex. 1488, T. 12821.
5. Ex. 3066, T. 27379; Ex. 1989, T. 14634.

in fact states in its general summation:[1] "The expression 'Japanese Government' is here used in a very wide sense as embracing not merely members of the cabinet but senior officers of the army and navy, ambassadors and senior public servants." It then is evident that in using the expression throughout its summation it asks the Tribunal to assume that knowledge of one or more of these officials constitutes knowledge of all of them, that any report from one army or navy officer to another army or navy officer infers knowledge, not only to all senior army and navy officers but also all civilian officials of the government, an assumption and inference which is totally unwarranted.[2]

89. The prosecution in its individual summation refers to an exhibit entitled "Draft submitted for Approval of Higher Officers,' Matter Relating to the Establishment of an Office Concerning Japanese Residing in Enemy Countries and Enemy Nationals Residing in Japan."[3] The prosecution nowhere states what it believes this exhibit proves. It refers to it as a regulation but we submit that even a casual reading of it shows that it is not in any sense a regulation but

1. J-2.
2. See also defense summation, Sec. B (TAKAYANAGI), pp. 142,143.
3. SS-23.
4. Ex. 3845, T. 38174.

just what it is labeled, a draft plan. The prosecution quotes one paragraph of this draft plan but omits another significant one which reads, "1. Work to be Handled by the New Office (Full Liaison shall be maintained with bureaus and sections concerned)."[1] Even in the paragraph quoted by the prosecution it does not state that this bureau looks after the treatment of prisoners of war but merely that it "looks after business related to the treatment." I submit that this only means it looks after the business of the Foreign Office related to such treatment. That is that the office should be the contact with the protecting powers to receive their requests for information and for visits to camps, to provide the liaison necessary within the government to do this work and to forward the answers to the protests and requests -- in other words, this was an assignment of certain work, then being performed by the Foreign Office, to a particular bureau.[2] It differs radically from, for example, the Prisoner-of-War Information Bureau which was established by Imperial ordinance under which the authority concerning information and records of prisoners of war was delegated to the War Minister.[3]

1. Ex. 3845, T. 38174.
2. Ex. 3898, T. 38788.
3. T. 14879.

Since the establishment of this office was an action within the Foreign Office, rather than by government or cabinet action, it in no way expanded nor could it expand the duties or competence of the Foreign Minister. The draft was provisional and changes were made.[1] The functions and duties of the bureau set up in the Foreign Office are shown by a document issued by that bureau shortly after it was established, which clearly sets forth the functions and duties actually performed by that office as follows:

1. T. 38899.

"3. Liaison business relating to enemy nationals who are prisoners of war, internees, or residents in camps under Japanese authority.

"The liaison business relating to the treatment of the above-mentioned enemy nationals(clothing, food living quarters, inquiries into their safety, furnishing of lists, appointment of, and visits by the countries representing their interests and representatives of the international committee of the Red Cross, correspondence, relief, labor, punishment, repatriation).

"Such liaison business includes that of handling of outgoing communications to representations from enemy countries and other sources."[1]

These were the duties performed by the Treaty Bureau before this office was established, they were the duties performed by the new bureau after it was established and throughout the time the defendant was Foreign Minister.[2] On the date the office was set up the name was fixed as "Bureau in Charge of Japanese Nationals in Enemy Countries", which shows its primary duties and together with the exhibit to which I have just referred showing that the business was liaison, shows that the draft plan was not followed either in its entirety or in the all-important matter

1. Ex. 3896, T. 38,784
2. Ex. 3894 , T. 38,782

of the scope of its responsibility.[1] Since the Bureau was set up wholly by ministerial action within the Foreign Ministry, not by any regulations, ordinances, or law, no approval by any higher source such as the Cabinet was needed or obtained and no jurisdiction over treatment or custody of prisoners of war was imposed upon the Foreign Office. The War Ministry continued to have sole jurisdiction and authority.[2]

90. It remains only to discuss the testimony of SUZUKI, Tadakatsu, former Chief of the Bureau in Charge of Japanese Nationals in enemy countries[3] (not of the office concerning Japanese residing in enemy countries and enemy nationals residing in Japan as alleged by the prosecution - SS-13). The prosecution alleges that his testimony confirmsthis defendant's guilt since it states:

"He testified only that:

"'A. SHIGEMITSU knew of the protests of the protecting powers.

"'B. In spite of that he never took up the matters of prisoners of war before the Cabinet.

"'C. SHIGEMITSU did not permit visits by the representatives of protecting powers to the prisoner of war camps'."

1. Ex. 3897, T. 38,785
2. Ex. 3895, T. 38,781, 38,782
3. Ex. 3898, T. 38,785

This does not correctly reflect his testimony so far as it goes, nor does it take account of the fact that he testified to much more - that SHIGEMITSU went far beyond his duty in an effort to ameliorate the conditions of prisoners of war as I shall point out later. I will deal first with (A) and (C).

(A) Although none of the pages cited in the footnote contain any evidence showing that SHIGEMITSU knew of the protests by protecting powers, he of course knew that protests were being received. In view of the volume of work of the Foreign Office he could not of course handle it personally or do all this work himself. The witness SUZUKI testified that as for most of the work or the work generally he himself did his utmost to clear up the matters.[1]

(C) There is also no evidence on the pages of the transcript cited by the prosecution that "SHIGEMITSU did not permit visits by the representatives of protecting powers to prisoner of war camps". I have shown in this summation that the War Minister and the War Minister alone could give such permission and that the defendant merely conveyed his decision to the protecting powers and I will not argue this

1. T. 38,906

point again. The testimony of the witness on the other hand shows that SHIGEMITSU and his subordinates endeavored long and earnestly to obtain such permission from the War Ministry but that the military authorities would not readily comply with such requests.[1] The witness testified further that as a result of the efforts of the Foreign Office permission to visit such camps on a reciprocity basis was at last granted in December 1944.[2]

91. As to (B), the witness testified that he did not "think" that the accused took up the matters of prisoners of war before the Cabinet.[3] It is submitted first, that it has not been shown that the defendant had any legal duty to do so. Furthermore all the information which he had from the ministry whose duty it was to investigate and report the information on which answers to protests were based reported that there was no delinquency. These reports came from his colleague in the Cabinet, the War Minister. The War Minister had sole responsibility for the treatment and custody of prisoners of war. The witness testified that according to Japanese practice and custom it was inconceivable that anything

1. Ex. 3898, T. 38.795,
2. Ex. 3898, T. , 38,795; Ex. 2016, A 56
3. T. 38,911

relating to prisoners of war should be taken up by the Cabinet unless the matter were submitted by the War Minister.[1] His testimony is borne out by Article 6 of the Imperial Ordinance on the Organization of the Cabinet[2] which provides that the initiative in taking up matters is with the minister in charge, in this case the War Minister.

92. It is submitted that SHIGEMITSU took far more effective and practical steps than that of officially calling the matter to the attention of the Cabinet. February, 1944, on the occasion of the American protests he took these matters up with TOJO, the War Minister,[3] who then included in his own person the offices of Premier, War Minister, and Chief of the Army General Staff.[4]

93. In October 1944, he took further more effective and practical steps by taking these matters up with the Supreme Council for the Direction of the War. Unlike the Cabinet, this body included all officials that had any factual or legal competence over the custody and treatment of prisoners of war.[5]

1. T. 38,913
2. Ex. 70, See also Ex. 73
3. Ex. 3898, T. 38,791
4. Ex. 1278 T. 795, 796
5. Ex. 3898, T. 38,793

The members of this Council, besides the Foreign Minister, were the Premier, KOISO,[1] and the War and Navy Ministers, and, not members of the Cabinet but having great competence and power in these matters, the Chiefs of the Army and Navy General Staffs. The Secretariat of the Council were the Directors of the Military and Naval Affairs Bureaus, both of whose offices dealt with prisoner of war matters, and the Chief Secretary of the Cabinet.[2] On occasions the Vice-Chiefs of the General Staffs, the Army and Navy, attended the Council and members of the Cabinet concerned. In this Council there was no chairman,[3] the Premier was in charge of expediting matters. Like all the Liaison bodies this Council was formed because the Cabinet and other ordinary Government bodies did not have sufficient power to deal with matters under the military command. That this body

1. In the Summation for the defendant KOISO (N-12, pp. 112-115) reference is made to the testimony of the witness TANAKA, Takeo (T. 32,544). TANAKA testified only that prisoner of war matters were not dealt with by the Cabinet Council. The witness SUZUKI also mentioned (T. 38,914) in that Summation testified only that he did not think that SHIGEMITSU discussed prisoner of war matters individually with KOISO.
2. Ex. 3390, T. 32,537
3. Ex. 3390, T. 32,537

was a more effective instrument for dealing in such matters than the Cabinet and that, its decisions governed the decisions of the Cabinet has been admitted by the prosecution. It has been called by the prosecution the "old Liaison Conference under another name"[1] and this Tribunal well knows the power of the Liaison Conference. It is even stated by the prosecution that this council had more power. I quote:

"The succeeding (KOISO) Government separated the military from the administrative and set up this new body called 'The Supreme Council for the Direction of War'. As a result of this reorganization, the Liaison Committee was abandoned largely because it did not have enough power and was unable to iron out the differences of opinion in high governmental circles, particularly upon the question of industrial production.

"The new Supreme Council was an effort to unify the supreme command and national affairs after the basic administrative and military policies had been formulated. Its task was one of integration with particular reference to military operations and production.

"The new Supreme Council was responsible for decisions relating to the basic plans for the execution of the war and the all-important aircraft and

1. T. 681

other war production. The basic policies decided by the Council were carried out by the Imperial Headquarters and the Government. The relations between the new Council and the Government were not based on legislating but rather on political considerations. In other words the Cabinet was not bound legally by the decisions of the new Council, but from a political stand-point, as a matter of course, it was governed by the decisions of the Council".[1]

94. It is submitted that in choosing this body whose decisions governed those of the Cabinet Council, he chose the more effective instrument and the events which followed showed this. As a result of his doing so, the Prisoner of War Information Bureau sent its members to prisoner of war camps to instruct the responsible officers regarding the considerate treatment of prisoners of war.[2] Brigadier Blackburn testified to the improvement of prisoners of war from October 1944 to April 1945 when the defendant went out of office.[3] The witness YAMAMOTI, Yoshio, testified that in December, 1944, the instructions were issued to make a survey report on the conditions of prisoners of war held outside Japan and that when difficulties

1. T. 631-2
2. Ex. 3898, T. 38,794
3. T. 11,618

in traffic and communication resulted in reports not reaching Tokyo, the instructions were renewed.[1] The fact that the reports did not come in was, of course, no fault of this defendant. By December of that year he had succeeded in persuading the military authorities to permit visits to camps in occupied territory.

95. Testimony of the Witness SUZUKI shows many other efforts to ameliorate the conditions of prisoners of war beyond the limits of the duty of this defendant. The more important include:

(A) Efforts to expedite the distribution of relief goods and funds, efforts to provide facilities for sending telegrams and to obtain permission for neutral representatives to vitit camps in occupied territories, informal conferences of officials in the Foreign Office with officers of the military and naval services during which it was urged by Foreign Office officials that conditions be corrected if the facts alleged in the protests should in any way be true.[2]

(B) Efforts in April 1944 to set up a Cabinet Committee to discuss international law matters which did not succeed because matters of prisoners of war

1. Ex. 3066, T. 27,376
2. Ex. 3898, T. 38,790, 38,791, 38,794

were exclusively handled by the army.[1]

(C) Arrangements for the exchange of internees and the transportation of relief goods to civilian internees and prisoners of war from October, 1943, and arrangements for another ship Teia Maru as a result of a request by the United States Government late in 1943.[2]

96. The prosecution in its general summation says "Responsibility for an act follows the power and duty to do the act"[3] It is submitted that the duties of the Foreign Minister are defined by Japanese law and it is submitted that no proof has been produced showing he had any duty with regard to the conduct of troops in the field nor over the treatment and custody of prisoners of war. To have duty he must be provided with commensurate power and he had no power over treatment or custody of prisoners of war. It is alleged that he "deliberately and recklessly failed to take adequate steps". It is submitted that he had no power to take such steps, no power of command, just as essential to proof under Count 55 as under Count 54, and could therefore have no duty to take them. His duty was to receive protests, requests for information and to visit

1. Ex. 3898, T. 38,792, 38,908,
2. Ex. 3898, T. 38,794, 38,795, 38,797; Ex. 3312, T. 30,218
3. Pros. Sum. K-21.

camps, and to forward answers if and when he received them from the persons who alone had the duty, power and means to supply such information and to grant such requests. He could not say to the Swiss Minister: "I refuse to give you that information," nor to the Minister of War: "Our enemy has said these acts occurred. You say they did not. I will not give your answer to the Swiss Minister." He had no power to investigate in order to gain knowledge and therefore could have no duty to do so and was in fact not permitted to do so. He could only forward the information he received if and when he received it, and would have violated his duty had he not done so. He had no power to give permission to visit camps, no power to order the Minister of War in charge of camps to give permission especially when the Minister of War said in time of war such permission would violate military security. Had he purported to do so when those who had power refused to give permission, he would have been untruthful and would have violated his duty. No duty under the laws of Japan has been proved, no power under the laws of Japan has been proved, the one must be commensurate with the other; no disregard of the duties of his office in the Japanese Government; "no evidence that he deliberately and

recklessly disregarded his legal duty," rather that he performed his duty. While he had no knowledge and no power to gain knowledge, he was concerned because he valued the reputation of his country and because of his humanitarian instincts if the facts alleged in the protest which he had no power to investigate should by any chance be true.[1] He could only persuade and while he had no legal duty to do so, he did persuade. And he took the matter up with the most powerful body in war time Japan, one more powerful than the Cabinet, formed like all the liaison bodies because the Cabinet and other ordinary Governmental bodies did not have sufficient power to deal with matters relating to military command. By the prosecution's own test[2] "No man has been charged with either crimes against peace or conventional war crimes and crimes against humanity unless he is in some way responsible for the aggressive policy followed by Japan which gave rise to those crimes". It is submitted that he should not have been charged under Counts 54 and 55 since there has been no proof that he was in any way responsible for such policy, rather that he opposed it. We submit that there is no evidence against this defendant on Counts 54 and 55.

1. Ex. 3898, T. 38,791, 38,793
2. Pros. Sup. K-3.

WARTIME SPEECHES

97. In their summation[1] the prosecution quotes excerpts from certain wartime speeches and congratulatory telegrams made and issued by SHIGEMITSU as Foreign Minister in the midst of the war. All were subsequent to September, 1943; all but one subsequent to the Cairo Declaration in which the Allied leaders stated that Japan would be stripped of all her territories excent the main island. Similar public speeches and telegrams of felicitations were offered in evidence by the prosecution on 29 January 1948[2] and rejected,[3] because they did not meet the tests for prosecution rebuttal evidence, that is, they had no importantance or probative value. I submit the same applies to the evidence from which the prosecution quotes its summation.[4]

EFFORTS TO END THE WAR.

98. From the time that he became Foreign Minister on 20 April 1943,[5] one of the chief objectives of this defendant was to terminate the war. The record contains many evidences of these efforts. KIDO testified from the time of his appointment until the day of the

(1. SS-19, SS-20.
2. T. 38522, 38525.
3. T. 38524, 38526.
4. See also prosecution summation K-3: "No man has been charged in this proceeding because of any act committed or any statement made by him in the course of his official duties pursuant to an already established policy if those matters were his only connection with that aggressive policy."
5. Ex. 123, T. 777.)

surrender, he worked with SHIGEMITSU for the termination of the war.[1] The first conference recorded in his diary was on 13 May 1943, within a month of SHIGEMITSU's appointment.[2] Again in January, 1944, SHIGEMITSU stated to KIDO that he believed that unconditional surrender was unavoidable.[3] KIDO's Diary shows that they conferred again on 26 June 1944, and he testified that they worked out a plan under which KIDO would assume responsibility for the Imperial Court and SHIGEMITSU for the Government.[4] They conferred again on 6 and 15 July[5] and throughout the summer and fall of 1944. Another conference is recorded on 8 March 1945.[6]

99. SHIGEMITSU and other members of the KOISO Cabinet disagreed with the Premier regarding negotiations with Miao Ping who claimed to have contact with the Chungking Government since it was evident that there was no chance of success and since they felt that he was not a reliable person with whom to deal; that full confidence and trust could not be placed in him.[7] The fact that after the war Miao Ping was tried, convicted,

(1. Ex. 3340, T. 31069.
2. Ex. 3340, T. 31069
3. Ex. 3340, T. 31073; see also T. 31224.
4. Ex. 3340, T. 31075.
5. Ex. 3340, T. 31106.
6. Ex. 3340, T. 31114.
7. Ex. 3340, T. 31115; see also T. 31245, 31246
Cf. defense summation N-12, pages 54, 98.)

and executed by the Government with which it is claimed he had contact[1] is, I submit, conclusive evidence of his unreliability and that there was no chance of success through him as an intermediary. The disagreement involved the approach not the desire or efforts for peace.

100. The accused worked for peace not only through his own Government but also through Germany to which country Japan was bound by agreement not to make a separate peace. In August, 1944, he conferred with German Ambassador Stahmer regarding peace between Germany and Soviet Russia as the first step towards common peace between all the nations concerned,[2] which conversation Stahmer reported to his Government. Later, in September, Stahmer and the accused conferred again, Stahmer bringing the reply in the form of an aide-memoire in which the German Government stated there was no indication the Soviet Government was ready for an understanding with Germany.[3] These talks had been initiated by the Foreign Minister.[4] He conferred with KIDO on 21 August about these matters,[5] reported them to the Emperor on 31 August 1944.[6]

(1. See T. 32263.
2. T. 24483-4
3. Ex. 2745, T. 24485, 24486.
4. T. 24488.
5. Ex. 3340, T. 31107-8.
6. Ex. 3340, T. 31108.)

101. He then made plans for the negotiation of peace through the Soviet Union with which country Japan had a neutrality pact. He reported these conversations with Stahmer at a meeting of the Supreme Council for Direction of War on 15 September 1944.[1] He then laid before the meeting a draft of measures to be taken vis-a-vis the Soviet Union.[2] This detailed and complete plan shows not only the intent of maintenance of neutrality, improvement of diplomatic relations between Japan and the Soviet Union and the realization of peace between Germany and the Soviet Union, but plans for peace between Japan and Chiang Kai-shek Government of China and for general peace with all nations through the good offices of the Soviet Union. He proposed implementation of the neutrality pact, a non-aggression pact, a treaty of good neighborliness and friendship, demarcation of borders, means for solution of conflicts along the border, the use of the good offices for peace between Germany and the Soviet Union, mediation for peace between Japan and the Chiang Regime and for general peace.[3] Simultaneously with such negotiations it was proposed that measures be taken for demarcation of the borders and solution of conflicts along such borders. It was fore-

(1. Ex. 3557, p. 2, not read.
2. Ex. 3557, T. 34551 to 34558.
3. T. 34554-5.)

seen that certain demands would be made by the Soviet Union and he recommended that the envoy sent to negotiate be given wide discretion and authority. It was contemplated that these demands would be very extensive and the plan set forth concrete suggestions as to how they would be met in case of complete or partial success in the negotiations. Even if the Soviet Union only agreed to maintain neutrality most of her demands would be acceded to. If general peace was realized all the Soviet demands would be met. Throughout this period he conferred with KIDO and had audiences with the Emperor about these matters.[1]

102. SHIGEMITSU also worked for peace through another neutral power. The Swedish Minister to Japan, Bagge, was returning to Europe and at SHIGEMITSU's suggestion sent SAKAYA, the former Japanese Minister to Finland, a friend of Bagge's to see him. Shortly after his talk with SAKAYA, Bagge conferred with SHIGEMITSU who urged him to find out the possibilities of obtaining peace for Japan. Bagge testified that he remembered vividly SHIGEMITSU's express desire to do everything in his power to end the war as soon as possible even at great sacrifice to his country. A few days later SAKAYA saw Bagge and told him that the matter was most urgent (1. Ex. 3340, T. 31107-9.)

and that SHIGEMITSU hoped he would leave as soon as possible and go straight to Stockholm to take up the matter with his Government.[1] The cabinet of which SHIGEMITSU was a member resigned shortly afterwards. SHIGEMITSU's successor, TOGO, took the same view of the matter but later decided to try to obtain peace through the good offices of Soviet Russia.[2]

103. Even after he ceased to be a member of the Government he continued his efforts for peace. On 9 August 1945 the Government then in office was considering the acceptance of the Potsdam Declaration and it was proposed that Japan make four conditions to its acceptance. SHIGEMITSU called on the Lord Keeper to urge that the Declaration be accepted without any conditions.[3]

104. The accused played an all-important part in the final act which ended the great Pacific War. On 2 September 1945, he signed the Surrender on board the U.S.S. Missouri in behalf of the Emperor of Japan and the Japanese Government.[4] This was the culmination of all his diplomatic actions for the attainment of peace. He had worked for peace throughout his diplomatic career

(1. Ex. 3558, T. 34561 to 34562.
2. Ex. 3558, T. 34563, 34564; see also Ex. 3620, T. 35455-7.
3. Ex. 3340, T. 31176.
4. Ex. 6, T. 17156.)

and that SHIGEMITSU hoped he would leave as soon as possible and go straight to Stockholm to take up the matter with his Government.[1] The cabinet of which SHIGEMITSU was a member resigned shortly afterwards. SHIGEMITSU's successor, TOGO, took the same view of the matter but later decided to try to obtain peace through the good offices of Soviet Russia.[2]

103. Even after he ceased to be a member of the Government he continued his efforts for peace. On 9 August 1945 the Government then in office was considering the acceptance of the Potsdam Declaration and it was proposed that Japan make four conditions to its acceptance. SHIGEMITSU called on the Lord Keeper to urge that the Declaration be accepted without any conditions.[3]

104. The accused played an all-important part in the final act which ended the great Pacific War. On 2 September 1945, he signed the Surrender on board the U.S.S. Missouri in behalf of the Emperor of Japan and the Japanese Government.[4] This was the culmination of all his diplomatic actions for the attainment of peace. He had worked for peace throughout his diplomatic career

(1. Ex. 3558, T. 34561 to 34562.
2. Ex. 3558, T. 34563, 34564; see also Ex. 3620, T. 35455-7.
3. Ex. 3340, T. 31176.
4. Ex. 6, T. 17156.)

and this was the third agreement ending hostilities which he had signed during the period of the alleged conspiracy for war; the first at Shanghai, the second in Moscow, and the last on the Missouri in Tokyo Bay.

105. There had been riots and attempts at assassination when it was decided to accept the Potsdam Declaration[1] so that the decision to accept responsibility for consummating that acceptance by signing the surrender was not a mere expression of good will, not the popular thing to do, but involved risk of life and limb. He had known for thirteen years what an attempt at assassination might mean even if not wholly successful.

106. Your Honors, we are told you want us to give you facts, not eloquence, for which I am glad, being incapable of the latter. I have at times shown my feelings and my only excuse is that they run very deep. I regret any delinquency on my part, if such has occurred, for this client of mine deserves the best of defenses and his many friends all over the world have expected it of me.

107. I am very proud to have defended this man though I have never understood why he should be here to defend. Only the prosecution can tell you and I submit it has not done so in its proof or even in its

(1. Ex. 3340, T. 31194-8, 31201-2; Ex. 3231, T. 29322-6.

summation, the allegations of which, I submit present no offenses within the true intent of the Charter. The testimony in his behalf has been produced not only from witnesses testifying for the defense but from those testifying for the prosecution. Not only his own countrymen, but many men from nations lately at war with his have testified for him, a man accused of crimes against their nations.

108. The proof shows that this defendant has never been a party to any conspiracy for war, that this defendant never planned war, never initiated war, never waged war and -- it seems fantastic to have to say it -- never murdered anyone. When hostilities started despite his efforts, he did his utmost to limit them, to prevent their breaking into open war, to end them. He tried to prevent the spread of war to East Asia and after it started tried to bring it to an end as soon as possible and he represented his country in the memorable act which ended it. He would not wish you to think him other than a patriotic Japanese, loyal to his country and his Emperor, both before, after and during the war, a Japanese who believed and still believes that the welfare of his country lay in working with, not against the western democracies, that Japan and China and the other nations of the Orient, close neighbors and brothers in

blood, could and should be equals and friends and that peace should be maintained with the great country which lies between these two cultures, Soviet Russia. His patriotism has been wise and far-seeing, without any taint of aggressive force.

109. And so I ask for an acquittal on all Counts. That is all I can ask for now, for the years he has spent in Sugamo Prison can never be returned to him.

THE PRESIDENT: It is too late to start the next summation.

We will adjourn until half past nine tomorrow morning.

(Whereupon, at 1600, an adjournment was taken until Friday, 2 April 1948, at 0930.)

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